



LAW LIBRARY  
CORNELL LAW SCHOOL

THE GIFT OF

..... Charles K. Burdick .....

..... Ithaca, N. Y. ....

Date..... Sept. 26, 1936 .....

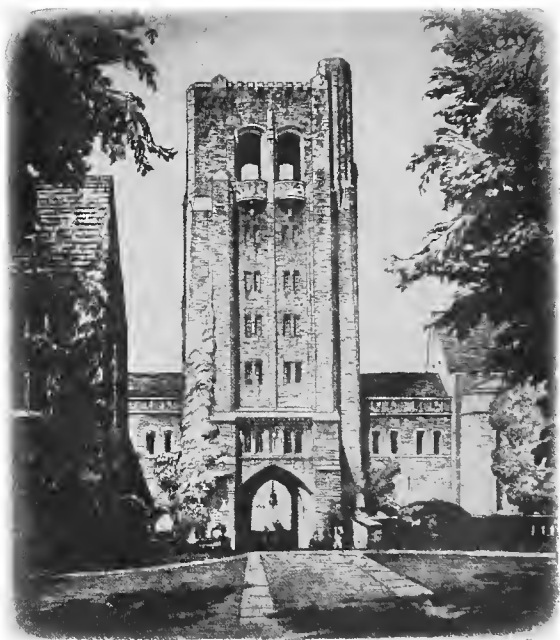
Cornell University Library  
**KFN5985.C65M12 1869**

**The constable's guide :being a concise t**



**3 1924 022 875 250**

law



**Cornell Law School Library**

THE  
CONSTABLE'S GUIDE;

BEING A

CONCISE TREATISE ON THE POWERS AND DUTIES OF  
CONSTABLES

IN THE

STATE OF NEW YORK;

TO WHICH IS ADDED

AN APPENDIX,

CONTAINING MOST OF THE PRACTICAL FORMS NECES-  
SARY TO BE USED BY THEM IN THEIR  
SEVERAL DUTIES.

By <sup>HENRY STRONG</sup> H. S. McCALL,  
COUNSELLOR-AT-LAW.

SECOND EDITION.

ALBANY:  
WILLIAM GOULD & SON, LAW BOOKSELLERS.  
1869.

B38763

Entered according to Act of Congress, in the year one thousand eight hundred and sixty-two,

By WILLIAM GOULD,

In the Clerk's office of the District Court of the United States for the Northern District of New York.

WEED, PARSONS & COMPANY,

PRINTERS AND STEREOTYPERS.

## PREFACE.

---

THE duties, powers and responsibilities of Constables in the State of New York, have ever been large and important, and they have been much enlarged by the recent acts of the Legislature, increasing the jurisdiction of justices' courts. The works, which were some time since published with reference to Constables, their powers and duties, have been for several years out of print, and a work properly adapted to the use of Constables has been a long time demanded.

The changes which have been made in the statutes, with reference to the powers of Constables, are very many, while the decisions of our several courts have served to elucidate many things which were formerly doubtful or uncertain. To collect these, and arrange them in proper order, has been a work requiring considerable labor and care. That some decisions may have been overlooked, amid the many reports which we now have, is possible, yet the Constable will no doubt find in the following pages all the instruction needed in the ordinary and responsible duties of his office.

An appendix of forms has been added, in order that the officer may so inform himself as to their form and character, as to be able readily to determine whether or not the several processes put into his hands are valid and sufficient.

The kind favor which has been extended to the author's previous works, he trusts, will be extended to the present, hoping that in future editions he may be able to supply any deficiencies that may be found in this.

## NOTE.

---

AMONG the various authors which have been consulted in preparing the present work, the following will be found referred to on the different pages:

Abbott's Practice Reports: Abb.—Allen on Sheriffs: Allen.—Barbour's Criminal Law: Bar. C. L.—Barbour's Superior Court Reports: Barb.—Barbour's Chancery Reports: Barb. Ch.—Barnwell and Creswell Reports: Barn. & Cres., or, B. & C.—Blackstone's Commentaries: Bl. Com.—Bouvier's Law Dictionary: Bouv. L. D.—Caines' Cases: Caines.—Carrington and Caines' Reports: Car. & P., or C. & P.—Chitty's Criminal Law: Chit. Cr. L.—Coke upon Littleton: Co. Lit.—Coke's Reports: Co.—Comstock's Reports: Com.—Constitution of the United States: Const. U. S.—Cowen's Reports: Cow.—Cowen's Treatise: Cow. Tr.—Cowper's Reports: Cowp.—Crocker on Sheriffs: Crock.—Croke's Reports: Cro. Eliz.—Denio's Reports: Denio.—Duer's Superior Court Reports: Duer.—Dyer.—East's Crown Law—East's C. L.—Espinasse Reports: Esp.—Graham's Practice: Gra. Prac.—Hale's Pleas of the Crown: Hale's P. C.—Hawkins' Pleas of the Crown: Hawk. P. C.—Hill's Reports: Hill.—Howard's Practice Reports: How.—Johnson's Cases: John. Ca.—Johnson's Reports: John.—Kernan's Reports: Ker.—Lord Raymond's Reports: Ld. Ray.—Massachusetts Reports: Mass.—Meeson and Welsby's Reports: M. & W.—Metcalf's Reports: Met.—Modern Reports: Mod.—Moody's Circuit Court Reports: Moody C. C.—Peters' Reports: Pet.—Revised Statutes: R. S. (The fifth edition has been used, and the marginal

paging is enclosed in brackets.)—Roscoe's Criminal Evidence: Ros. Cr. Ev.—Russell on Crimes: Russ. on Cri.—Salkeld's Reports: Salk.—Sandford's Superior Court Reports: Sand.—Selden's Reports: Sel.—Selwyn's Nisi Prius: Selw. N. P.—E. D. Smith's Superior Court Reports: E. D. Smith.—Southard's Reports: South.—Taunton's Report: Taunt.—Term Reports: T. R.—Wendell's Reports: Wen.—Wilcock's Office of Constable.

The edition of the R. S., referred to, is the third edition, with the marginal paging in brackets.

# CONTENTS.

---

## INTRODUCTORY CHAPTER.

|                                  |   |
|----------------------------------|---|
| Of the office of Constable,..... | 8 |
|----------------------------------|---|

## CHAPTER I.

|                                                              |    |
|--------------------------------------------------------------|----|
| Election, duration, qualification of office of Constable, .. | 13 |
|--------------------------------------------------------------|----|

## CHAPTER II.

|                                                            |    |
|------------------------------------------------------------|----|
| Duties of Constables as officers of the several Courts, .. | 25 |
|------------------------------------------------------------|----|

## CHAPTER III.

|                                                                      |    |
|----------------------------------------------------------------------|----|
| Power and duties of Constables as officers in Justices' Court, ..... | 28 |
|----------------------------------------------------------------------|----|

## CHAPTER IV.

|                                                                                                                                      |    |
|--------------------------------------------------------------------------------------------------------------------------------------|----|
| Of the powers and duties of Constables in the execution of process in various proceedings cognizable by a Justice of the Peace,..... | 95 |
|--------------------------------------------------------------------------------------------------------------------------------------|----|

## CHAPTER V.

|                                                  |     |
|--------------------------------------------------|-----|
| Powers and duties in miscellaneous matters,..... | 117 |
|--------------------------------------------------|-----|

## CHAPTER VI.

|                                                            |     |
|------------------------------------------------------------|-----|
| Duties as a peace officer, and in criminal proceedings, .. | 124 |
|------------------------------------------------------------|-----|

## CHAPTER VII.

|                                                                                    |     |
|------------------------------------------------------------------------------------|-----|
| Certain prohibitions and penalties pertaining to the<br>office of Constables,..... | 143 |
|------------------------------------------------------------------------------------|-----|

## CHAPTER VIII.

|                          |     |
|--------------------------|-----|
| Fees of Constables,..... | 153 |
|--------------------------|-----|

|                         |     |
|-------------------------|-----|
| APPENDIX OF FORMS,..... | 161 |
|-------------------------|-----|

# THE CONSTABLE'S GUIDE.

---

## INTRODUCTION.

### OF THE OFFICE OF CONSTABLE.

THE office of constable is one of importance as well as of great antiquity. When Alfred had protected his kingdom from the incursions of the Danes, he turned his attention to secure it from internal tumults, and to exterminate the numerous bands of robbers which had become formidable during the anarchy of preceding years. For this purpose he divided the kingdom into counties; the counties into hundreds; and the hundreds into tenths or tithings, consisting of ten families each. The chief officer of the tithing was called a tithing-man, bors-holder, head-borough, third-borough, borough-head, first-pledge, and chief pledge.

When the Normans invaded the country, they introduced the feudal system in all its details, and the Anglo-Saxon institutions yielded in all parts of the kingdom to the jurisdiction assumed by the

military leaders. The courts leet, which had been throughout the country the courts of the people, became in effect, the courts of the lords of the franchise, in which the barons held by royal grant almost the same authority as the king in those which still remained in his hands; the only public tribunals being those of justices in eyre, and of a few incorporated towns. Under this system of government were appointed a series of officers from the constable of the kingdom, who was one of the great officers of state, the constables or governors of the king's royal towns and castles, which were held *in capite*, and the constables of the Earls Palatine, who exercised an acknowledged regal right, and had the authority both of the constables of the county or palatinate, and the constables of the castles, down to the constable of each feudal chief, who was governor of his territory; and the constable of his towns and castles; until the district of every baron presented the mimicry of a royal realm, with all the officers necessary to command the retainer, administer the laws, and keep the peace of the petty king. Constables of towns and castles at first possessed a judicial character and had very extensive authority. (Willcock's Office of Constable.)

The power of the Lord Constable of England was at one time so extensive that it was considered too great for any subject to hold. The office was for a number of years hereditary, until Edward,

Duke of Buckingham, being attainted of high treason, Anno 13 Hen. VIII, the office became forfeited to the crown, and was never afterwards granted, but to be exercised at a coronation. Says Gwyn, "the court of the Constable and Marshall determineth contracts touching deeds of arms out of the realm upon land, and handleth things concerning war within the realm, as combats, blasons of armory, &c., which cannot be determined by the common law; and in these matters is commonly guided by the civil law." The power and jurisdiction originally held by the constables were limited and restricted by repeated acts of parliament until they became mere ministerial officers with powers similar to those they now possess. (Jacob's Law Dict., art. Constables.)

The colonial assembly provided for the election of constables in the several towns, with powers and duties similar to the English constables. The first constitution of the state, adopted in 1777, provided, among other officers, that constables, heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature." The two succeeding constitutions provided, that all officers heretofore elective by the people, shall continue to be elected, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct. Under these provisions, the towns continue to elect their

constables as they have done for more than a century: while the new offices of constables, which have been created in many of our cities and villages, are in part elected and in part appointed as the statutes creating such offices direct.

## CHAPTER I.

### ELECTION, DURATION AND QUALIFICATION OF OFFICE OF CONSTABLE.

ANY person is eligible to the office of constable who is an elector of the town from which he shall be chosen. (1 R. S., 825 [345.])

The constitution fixes the qualification of electors as follows: Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election, in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this State, and for one year next preceding any election, shall have been seised and possessed of a freehold estate of the value of two hundred and fifty dollars over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election." (Art. 2, Sec. 1.)

In the several cities and villages of the State constables are elected or appointed according to the provisions of their respective charters; but in the towns they are elected by ballot at the town meetings held therein annually. (1 R. S., 821 [345.] )

The electors of each town have the power at their annual town meeting to determine what number of constables they will elect, not exceeding five for each town, (1 R. S., 815 and 817.) And this determination must be by a formal vote or resolution of the electors, in the same manner that they express their will on other subjects. Where there is no limitation of the number by such formal resolution, and more than five persons are voted for, the five having the greatest number of votes are entitled to discharge the duties of, and receive the emolument of the office. (*People v. Adams*, 9 Wend. 333.) And if the electors limit the number of constables to be chosen to four, ballots containing the names of more than four persons designated as voted for, for the office of constables cannot be canvassed, but must be rejected. (*People v. Loomis*, 8 Wend., 396; 1 R. S., 427; Laws of 1842, ch. 130.)

A poll list is to be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received, and if it shall appear that the name of the person elected has not been entered on such poll list as a voter, the clerk of such town meeting, within ten days thereafter, shall transmit to such person a notice of his election, (1 R. S., 821, 823 [343.] )

If any town shall neglect at its annual town meeting to choose constables, it is the duty of any three justices of the peace of the town, by warrant under their hands

and seals, to appoint such officers, and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers, and be subject to the same duties and penalties, as if they had been duly chosen by the electors. So, too, if the office shall become vacant by death, resignation, removal or refusal to serve, constables are to be appointed by three justices as above mentioned. (1 R. S., 828; *Wildy agt. Washburn*, 16 John., 49; *People v. Van Horne*, 18 Wend., 515.) The justices making such appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed; if, when such vacancy shall occur, there shall be less than three justices residing in the town in which such vacancy shall occur, the justice or justices residing in such town may associate with themselves one or more justices of the peace from any adjoining town as may be necessary to make the number of three; and such three justices shall have the like power to fill such vacancy as if they were respectively justices of the town in which the vacancy occurred. (1 R. S., 829; Laws of 1830, ch. 320, § 3.)

It is not necessary that a vote should be passed each year limiting the number of constables to be elected in the town, for, when the number to be elected has once been fixed, by a vote of the town, it will be a valid determination for subsequent years, and until such town shall, at a regular town meeting, determine on the election of a different number.

Vacancies in the office of constables in the cities and villages of this State are generally filled by the common councils of such cities, or by the boards of trustees

of such villages, in accordance with their respective charters. In the city of Albany the police constables, whose duties relate to criminal proceedings, are appointed and their vacancies filled by the Board of Police. (Laws of 1865, chap. 554, p. 1097.) And the constables are elected by the electors, one constable in each ward annually, and in case there shall be any vacancy in the office of any constable to be elected by the qualified voters, in either of the wards of the city for the term of two weeks or more, it shall be lawful for the justices of the justices' court to supply such vacancy, in the same manner that any three justices fill vacancies in the office of constable in the several towns. (Laws of 1844, chap. 347, p. 531.)

Every person chosen or appointed to the office of constable, before he enters on the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe the oath of office prescribed by the constitution. (1 R. S., 826.) This oath of office may be taken before any judge of any court of record, any justice of the peace any commissioner of deeds, or before any clerk of any court of record, or it may be subscribed and sworn before the town clerk of the town in which such officer shall be elected, and when taken by the town clerk it shall be administered and certified without fee or reward. The certificate of oath of office shall be filed in the office of the town clerk. And if the person chosen or appointed constable shall not take and subscribe such oath, and cause the certificate thereof to be filed as above required, such neglect shall be deemed a refusal to serve. (1 R. S., 825.) And the town clerk

is to give notice of such neglect to the justices of the town, and if he enter upon the duties of his office before he shall have taken such oath he shall forfeit to the town the sum of fifty dollars. (Id., 827 [347.])

Before entering upon the duties of his office, and within eight days after he shall be notified of his election or appointment, the person elected, or appointed constable shall execute in the presence of the supervisor or town clerk of the town, with one or more sureties to be approved of by such supervisor or town clerk, an instrument in writing, by which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay on account of any execution which shall be delivered to him for collection. The supervisor or town clerk shall indorse on such instrument, his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the town clerk, and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts of the execution thereof, by such constable and his sureties. (1 R. S., 826 [346.])

It is not necessary that this instrument in writing should be in any particular form, as the statute prescribes what shall be the substance of the instrument, but is silent as to its form. The supreme court decided as early as 1822, that a penal bond to the people<sup>\*</sup> would be a compliance with the statute, though it is not necessary that it should be thus executed. (*People v. Holmes*, 2 Wend., 281.) A bond given to the people of the county was held in the case of *Warner v. Racey* (20 Johns. R., 74),

to be wrong; but the supreme court afterwards in reviewing that case, say: "The bond in that case was payable to the people of Niagara county, which was clearly wrong, and the court say, that it should be in the name of the people of the State of New York. This was said *obiter*, and, undoubtedly without much examination, "for the statute determines that the instrument should be in such a shape that any person aggrieved may maintain a suit thereon. (*Dutton v. Kelsey et al.*, 2 Wend., 615.) And the best form is a simple agreement without any penalty, to pay to any person who might be aggrieved by the constable's neglect of duty. (*People v. Holmes*, 5 Wend., 191, see also *Fellows v. Gillman*, 4 Id., 414.)

The statute declares that the bond shall be filed within ten days after the election, and before the constable enters upon the duties of his office. (*Dutton v. Kelsey et al.*, 2 Wend., 615.) And it cannot be doubted that the constable himself would be responsible for any act done by him, before filing the bond. The statute being directory to the officer himself, he cannot take advantage of his own omissions. Nor is there any reason why the sureties should not be liable, notwithstanding the want of compliance with the statute provisions, as where the town clerk neglects to indorse his approval of the sureties. Their signature is all that is necessary to a proper instrument to make them liable; and they cannot object that the instrument has not been sealed nor in the form contained in the statute. If the bond is not approved, and filed, the omission might be considered a refusal to serve, and the vacancy might be filled; but

such a neglect would not relieve the sureties from their liability. (*Skellinger v. Yendes*, 12 Wend., 306.)

Formerly in bringing a suit against the sureties on the constable's bond, it was necessary to set forth in the complaint all the facts necessary to give jurisdiction to the justice in the action in the cause in which the execution was issued, wherein the constable was in fault, a mere general averment of jurisdiction in the magistrate was not sufficient (*Lawton v. Erwin*, 9 Wend., 233, and *Cornell v. Barnes*, 7 Hill, 35), but since the Code, §161, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction. (*Hunt v. Dutcher*, 13 How., 538.)

The appointment of a constable is a judicial act; for the justices must first determine and adjudge that there is a vacancy in the office, and that the town neglected to fill it up. And the fact of the appointment is not traversable collaterally, or in a collateral action. The appointment remains valid until it be set aside or quashed in the regular course, upon *certiorari*. (*Wood v. Peake*, 8 Johns., 69.)

Constables hold their offices for one year, and until others are chosen or appointed in their places. (1 R. S., 828.) And the election of one or more constables at an annual town meeting will supersede all those who were elected the previous year, as where a town at an annual town meeting had determined there should be three constables elected, and at an annual town meeting thereafter without passing any specific resolution limiting the

number of constables to a less number, elected only two constables, it was held that all the three constables elected the previous year were ousted. (*The People v. Jones*, 17 Wend., 81.)

The office of constable becomes vacant on the happening of either of the following events :

1st. The expiration of the term for which the incumbent was elected, and the election or appointment of another to supply his place, and the qualification of the person so elected or appointed.

2d. The death of the incumbent.

3d. Resignation.

4th. Removal from office.

5th. Removal from the town for which he shall have been chosen or appointed.

6th. His conviction of an infamous crime, or such a crime as would have made him ineligible to the office.

7th. His neglect to take the oath of office, and file the security required by law within the time prescribed by statute.

8th. His acceptance of another office, the duties of which latter office are incompatible with the duties of the office of constable.

Any three justices of the peace of a town, may, for sufficient cause, shown to them, accept the resignation of a constable of their town; and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town. (1 R. S., 828.) If such vacancy is not filled within fifteen days from such resignation by election at an annual town meeting, then such vacancy may be filled as above provided.

Every constable who shall demand or receive any reward, gratuity, or valuable thing, to procure, assist, connive at, or permit any escape of any prisoner in his custody, shall be deemed guilty of a misdemeanor, and, if convicted therefor, shall forfeit his office and be forever thereafter incapable of executing the same. (3 R. S., 737 [438.])

So, too, if any constable shall ask or receive any money or valuable thing from a defendant, or any other person, as a consideration, reward or inducement for omitting to arrest any defendant, or to carry him before any justice ; or for delaying to take any party to prison ; or for postponing the sale of any property ; or for omitting or delaying the execution of any duty pertaining to his office, shall be deemed guilty of a misdemeanor, and, on conviction, shall be subject to fine or imprisonment, or both, in the discretion of the court. Every such conviction shall operate as a forfeiture of the office of constable.

So, too, if a constable shall, directly or indirectly, buy, or be interested in buying, any bond, note or other demand, or cause of action, for the purpose of commencing any suit thereon before a justice ; or if either before or after suit brought, he shall lend or advance, or procure to be lent or advanced, any money or other valuable thing to any person, in consideration of, or as a reward for, or inducement to, the placing or having placed in the hands of such constable, any debt, demand or cause of action whatever, for prosecution or collection, he shall be deemed in like manner guilty of a misdemeanor, and, on conviction, shall be subject to fine and imprisonment, or both, in discretion of the court ;

and his conviction shall operate as a forfeiture of his office. (3 R. S., 454, 455 [267.])

It must appear on the trial of the person claimed to have forfeited his right to the office of constable under the statute above referred to, that he was constable at the time of his purchase of the demand, and that he bought the demand for the purpose of commencing a suit thereon. The mere purchase of a chose in action is not of itself sufficient evidence of the intent mentioned in the statute, but that intent must be proved. (*Warren agt. Helmer*, 8 How., 420.) The object of the statute prohibiting the purchase of claims, demands and choses in action by constables, &c., for the purpose of bringing suit thereon, was to prevent constables from purchasing debts or other things in action, in order to obtain costs by prosecuting the same; and was not intended to prevent such a purchase for the honest purpose of protecting some other important right of the assignee. (See *Baldwin v. Latson*, 2 Barb. Ch., 306.)

If a person, while holding the office of constable, should be sentenced for a felony, he would forfeit his office, and would be forever thereafter prohibited from holding the office, unless he shall have been pardoned before or after his term of imprisonment has expired, and restored by pardon to all the rights of a citizen. (1 R. S., 418, and 3 R. S., 988.)

If any constable shall have collected any money on execution, and a recovery therefor shall have been had against his sureties, upon a complaint thereof being made, to any three justices of the same town, they shall summon such constable before them, to show cause why he should not be removed from his office. If such com-

plaint be established to the satisfaction of such justices, or of any two of them, after a hearing of the parties, or after the refusal or neglect of the constable to appear upon such summons, they shall, by an instrument under their hands, remove such constable from his office, assigning therein the reason for such removal, and shall file the same in the office of the town clerk, who shall forthwith cause a certified copy thereof to be served on such constable. Upon the service of a copy of such instrument, certified by the town clerk, on the constable named therein, such constable shall cease to have any power or authority as such, and his office shall be deemed vacant. (3 R. S., 460 [273.])

Notwithstanding the neglect, of a person elected or appointed constable, to file the constitutional oath of office and the proper security within the time prescribed by the statute is a legal refusal to accept the office, yet if the person enter upon the duties of the office, without such filing, he will be considered *de facto* a constable, because he came into his office by color of title, and it is well settled that the acts, done by such an officer are as valid, so far as the public or the rights of third persons are concerned, as though he had been an officer *de jure*, and that the title of the officer cannot be collaterally inquired into; it can be questioned only by a direct proceeding against the officer, by information in the nature of a *quo warranto*. (*Greenleaf v. Low*, 4 Denio, 170.) But if the person were suing to recover damages for an assault upon him as an officer, it would probably be a good answer to the action that he was not a legal officer, but a wrongdoer, who might be resisted. And clearly, he cannot recover fees or set up

any right of property on the ground that he is an officer *de facto*, unless he be also an officer *de jure*. (*The People v. Hopson*, 1 Denio, 579.)

A constable is not prohibited from holding any other office, but if he should, while holding the office of constable, accept another office, the duties of which are incompatible with his office as constable, the acceptance of such office would be a resignation of his office of constable.

## CHAPTER II.

### DUTIES OF CONSTABLES AS OFFICERS OF THE SEVERAL COURTS.

It is the duty of the sheriff of each county in this State, within a reasonable time before the sitting of any circuit court, court of oyer and terminer, county court or court of sessions, to summon personally so many constables of his county as he may have been directed to summon, by the court or the presiding judge thereof, to appear and attend upon the said court during its sitting; if no direction shall have been given by such court or its presiding judge, the sheriff shall in like manner summon so many constables as he may deem necessary to attend the sittings of the court; and every constable so summoned shall attend the sitting of such court upon pain of being fined for every day's neglect a sum not exceeding five dollars. (3 R. S., 479 [289.])

And in every county in which any term of the court of appeals or of the supreme court shall be held, the sheriff is to summon two constables to attend the same. (3 R. S., 278; Laws of 1847, ch. 429.)

It is the duty of the constables so attending to take charge of the court room, see that every thing is kept in proper order, and to obey the orders and directions of the court and of the sheriff, and to act as crier of the

court in his absence, or in case no crier shall have been appointed.

Constables while attending the sittings of the court as its officers are privileged from arrest on *mesne* process in civil actions during their actual attendance upon the sittings of the court. (3 R. S., 480.) And this is so, although he may at the time be attending as an officer, a court of an inferior jurisdiction, and the court from which the process issues be one of superior or general jurisdiction. (*Gibbs* agt. *Loomis*, 10 Johns., 463.) But this privilege remains only whilst in actual attendance or whilst going to and returning from court, and will not avail to shield them from arrest while at home, although such arrest prevent their contemplated attendance upon court. (*Corey v. Russell*, 4 Wend., 204.) And if a constable while in attendance upon the court as an officer be arrested on *mesne* process, he may apply for his discharge *ex parte*; notice need not be given to the party or his attorney on whose behalf the process issued. (*Humphrey v. Cumming, gent, one, &c.*, 5 Wend., 90., and *Secor v. Bell*, 18 Johns., 52.)

The courts-martial in different parts of the State are authorized to issue warrants for the collection of all fines imposed by such courts, directed to any constable of the county, in which the court was held, and in which the delinquent resides, and it shall be the duty of the constable to collect such fines in the same manner as he is authorized to collect any debt upon civil process, together with lawful costs, and the amount of the fine to be paid to the county treasurer. (1 R. S., 756.) The constable is also authorized to serve subpœnas, and execute warrants of attachment to compel the attendance

of witnesses before courts-martial, and may collect the costs and fees for such services on executions issued by such courts. And by warrants under the hand and seal of the president of such court, may commit to the jail of the county, to the custody of the sheriff, any person or persons who shall be guilty of disorderly, contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expression to or before such courts or court of inquiry, or any member of either of such courts in open court: such person so committed, to remain without bail or mainprize in close confinement, for a time to be limited, not exceeding three days, and until the officers' fees for committing, and the jailor's fees be paid. (1 R. S., 757, 758 [311.])

## CHAPTER III.

### OF THE POWER AND DUTIES OF CONSTABLES AS AN OFFICER IN JUSTICES' COURTS.

As an officer of the Justices' Court it is the duty of the constable to serve summons, warrants and attachment, and to make return to the same and to enforce executions issued by the several justices in the different cities and towns. In many special proceedings they have concurrent jurisdiction with the sheriff, yet they are the only officers who can execute process from the justices' court in civil cases, except in the cases where a justice deposes another person to perform such service.

Although, by the statute, they are required to reside in the same town in which they are elected, yet they may serve process in any part of the county; and they may pass through other counties in conveying one arrested on civil or criminal process, from the place of his arrest to the place where he is to be brought. (3 R. S., 428; *Mills agt. Kennedy*, 1 Johns., 502.) The conduct of constables, upon process from justices' courts, must be governed by the same law as that of sheriffs upon process of the higher courts, when there is no statute regulation, (*Pixley v. Butts*, 2 Cow., 421,) and they have the same power as sheriffs to call out the power of the county to aid in the execution of the pro-

cess: the statute expressly providing that, whenever a sheriff or other public officer, authorized to execute any process delivered to him, shall find or have reason to apprehend that resistance will be made to the execution of such process, he shall be authorized to command every male inhabitant of his county, or so many as he shall think proper, and with such arms as he shall direct, and any military company or companies in said county, armed and equipped, to assist him in overcoming such resistance, and, if necessary, in seizing, arresting and confining the resisters, their aiders and abettors, to be dealt with according to law. (3 R. S., 740 [441.])

And independent of any statutory provision to that effect, it is said that the constable may (and ought, if need be,) take the power of the county, viz.: What number of persons he shall think good, to aid him to execute in every behalf, the people's process, be it whatever kind; it being the people's commandment; and such as shall not assist him herein, being required, shall pay a fine to the people; and, in such case, the constable may command, and ought to have, the aid and attendance of all gentlemen, yeomen, husbandmen, laborers, tradesmen, servants and apprentices, and of all other such persons, being above the age of 15 years, and that are able to travel. And, in such case, they are not appointed any number, but it is referred to the discretion of the constable, what number he will have to attend upon him, and in what manner they shall be armed, weaponed, or otherwise furnished. (1 Cow. Tr., 514, 2d ed.)

Whenever a constable meets with resistance he is to certify to the court from which such process issued, the names of the resisters, their aiders and abettors, to the

end that they may be proceeded against for their contempt of such court; and every person commanded by such constable to assist him in the execution of process, and who shall refuse, or without lawful cause neglect to obey such command, shall be deemed guilty of a misdemeanor, and subject to fine and imprisonment. (3 R. S., 740; *Elder v. Morrison*, 10 Wend., 137.)

If a constable willfully, negligently, or erroneously fail to perform their whole duty in the execution of civil process they are liable to the party for whom they are acting to the extent of the damages such party has sustained thereby; while if they shall in any respect exceed the powers conferred upon them by their office or the process under which they act, they become liable to the party injured or aggrieved, whether he be the defendant in the process or a stranger, and in either case they are liable to punishment by indictment. They must perform their whole duty promptly and faithfully, not exceeding their authority, nor committing any error in the discharge of their duties.

Every constable should be well acquainted with the forms and requisites of every paper or process that is placed in his hands to serve or enforce. If the process be one which does not require the arrest of the party against whom it is issued, or the seizure of his property, it will be immaterial to the officer whether such process is regular or irregular, and, in ordinary cases, he should serve or execute the same according to its command and tenure, and make a proper return thereto, if a return is necessary. But where the process which requires or authorizes the arrest of any party or the seizure of his goods is directed or delivered to any con-

stable for execution, he should, before proceeding to execute the same, examine and see if such process is regular on its face, and in due and proper form; for if such process is void upon its face, that is, if it appears from the face of it that there was a defect of jurisdiction in the court, or officer issuing such process, or of the subject matter, or of the person or the party to be affected, the constable should not execute it, for if he does, or attempt to do so, he will be trespasser.

A ministerial officer is protected in the execution of process, whether the same issue from a court of limited or general jurisdiction, although such court have not in fact, jurisdiction in the case; provided that on the face of the process it appears that the court has jurisdiction of the subject matter, and nothing appears in the same to apprise the officer, but, that the court has also jurisdiction of the person of the party to be affected by the process. (*Savacool v. Boughton*, 5 Wend., 170.) As a warrant in due form, issued to a constable, by the receiver of taxes of the city of New York, directing the collection of a tax, protects the officer executing it, whether the tax was lawfully assessed or not. (*Chegary v. Jenkins*, 1 Sel., 376.) And even if the constable should learn that the officers issuing the process did not have jurisdiction, he would be protected. (*The People v. Warren*, 5 Hill, 440.) Where an execution is directed and delivered to him for execution he is not bound to inquire whether there is a judgment to support it, or whether the execution corresponds exactly with the judgment. (See *Bacon v. Cropsey*, 3 Sel., 199, and cases there cited.)

A constable may stop in the execution of a process, regular on its face, whenever he becomes satisfied that

there is a want of jurisdiction in the court or officer executing the same : and, if sued for neglect of duty, may show in his defence such want of jurisdiction. (*Earl v. Camp & Stone*, 16 Wend., 562.) And yet, if the irregularity be such a one that the party against whom the process has been issued, has waived such irregularity, the constable must execute the process. The rule that a constable is justified by his process, not void upon its face, is one of protection only : and if it is in fact void, he cannot build up a title under it, which will enable him to maintain an action against third persons. As where a constable had attached certain property and while in his possession it was taken away in an action brought by the constable for such taking, he must show, not only that the attachments are regular on their face, but that the officer who issued them had jurisdiction. (*Horton v. Hendershot*, 1 Hill, 118, and *Dunlap v. Hunting*, 2 Denio, 643.)

Actions in justices' court are commenced by the service of a summons, a warrant, or an order for the recovery of personal property. The more usual mode is by the service of a summons. Of these there are two kinds, a long summons and a short summons.

The long summons shall be directed to any constable of the county where the justice resides, commanding him to summons the defendant to appear before the justice who issued the same, at a time and place to be named in such summons, not less than six nor more than twelve days from the date of the same, to answer the plaintiff in the plea in the summons to be mentioned.

A long summons shall in all cases be served at least six days before the time of appearance mentioned

therein : if the defendant shall be found, it shall be served by reading the same to the defendant, and, if required by him, delivering a copy thereof. If the defendant shall not be found, it shall be served by leaving a copy thereof at the defendant's last place of abode, in the presence of some one of the family, of suitable age and discretion, who shall be informed of its contents. (3 R. S., 428 [228.])

The short summons is in all respects like the long summons, except that it is made returnable not less than two nor more than four days from the date thereof, and shall be served at least two days before the time of appearance mentioned therein. (3 R. S., 462.) A summons made returnable at any other times than those specified ; as in five or thirteen days from its date is a nullity. (*Sherwood v. The S. & W. R. R. Co.*, 15 Barb., 650.)

In computing the time, the day of service is to be excluded, and the day of appearance included ; and fractions of a day will not be regarded, as service of a long summons returnable on the forenoon of the eighth day of a month is well served in the afternoon of the second day of the same month ( *Columbia Turnpike Road v. Haywood*, 10 Wend., 422): and if made returnable on Friday it should be dated and served as early as Saturday before ; and if dated on the first of September, it cannot be made returnable after the thirteenth. And if the thirteenth should fall on Sunday, it cannot be made returnable later than the twelfth. (*Ex parte Dodge*, 7 Cow., 147 ; 1 Cow. Tr., 458, 2d ed.)

The constable is to find the defendant if he can ; but he is not bound to look for him at any other than his usual place of residence, or last place of abode.

And it is at such place, the copy is to be left, when the constable cannot find the defendant, and not where he may have been on business, visiting, or may have stopped on his travels, or the like. (*Dudley v. Staples*, 15 Johns., 196.)

When the defendant is a foreign corporation, the service must be made by delivering a copy thereof to the president or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof; but such service can be made in respect to a foreign corporation only, when it has property within this state, or the cause of action arose therein; or where such service shall be made within this state personally upon the president, treasurer or secretary thereof. (Code, §§ 64 and 134.)

Where service is made upon the managing agent, the managing agent must be one whose agency extends to all the transactions of the corporation—one who has, or is engaged in, the management of the corporation in distinction from the management of a particular branch or department of its business. (*Brewster agt. The Michigan C. R. R. Co.*, 5 How., 183.) A baggage master is not such a managing agent as the statute contemplates, and service on him will not be good service on the corporation. (*Flynn agt. The Hudson R. R. Co.*, 6 How., 308.) But service upon the superintendent and general managing agent of a foreign railroad corporation, in the possession of, and using a railroad in this state, is a good service. (*Bank of Commerce agt. The Rutland and W. R. R. Co.*, 10 How., 1.) So, too, service upon an agent of an insurance company, properly appointed and quali-

fied to procure and effect insurance for the company residing at a different place from where the principal office of the company is located, would be good service. (*Bain v. The Globe Ins. Co.*, 9 How., 448.)

If the outer door of the defendant's dwelling house be shut, the officer will be a trespasser, if he enter, without license, to make service of the summons (*Grah. Prac.*, 142, 143 ; 2d ed.); but he should, where admission is refused, make service, if possible, by reading the process aloud at the door, if he ascertain that the defendant be within; or by leaving a copy there with a suitable explanation, if the defendant be absent, and any proper member of the family be within hearing. And if the defendant himself refuse him admission, besides reading the summons aloud at the door, it would be advisable, in order to render the service more effectual, to leave a copy there, though not requested, proclaiming aloud that he does so. (1 Cowen's Tr., 505, 2d ed.)

If the defendant require he must leave with him a copy of the summons. The constable serving a summons shall return thereupon, in writing, the time and manner in which he executed the same, and sign his name thereto. (3 R. S., 428 [228].)

As this service is, in the one case, to enable the justice to proceed and give judgment, *ex parte* ; or in the other, may form the foundation of a warrant or a second summons, the constable should be particular in the service and return he makes. In case of personal service, the summons should be actually read to the defendant and in his hearing, unless he expressly waives that formality, or evades the hearing it, by leaving the constable or otherwise ; in which cases, information of its con-

tents, or an unsuccessful attempt to read it in the defendant's hearing, would, without doubt, be considered equivalent to a literal compliance with the statute.

The return should state the day of service (*Stewart v. Smith*, 17 Wend., 517), as well as the manner of service, but if the former be omitted, though the error will be fatal on *certiorari* or appeal, it cannot be taken advantage of collaterally. (*Bromly et al. v. Smith*, 2 Hill, 517.) As to the manner of the service, a return that the service was personal, is a sufficient specification (*Legg v. Stillman*, 2 Cow., 418), and when served by copy, if upon an individual, the return served by copy is sufficient without stating how the copy was delivered (*Hughes v. Mulvey*, 1 Sand., 92), though where the defendant is a corporation the return should show how it was served, to enable the justice to determine whether it was served on the proper officer. (*Sherwood v. Saratoga and W. R. R.*, 15 Barb., 652.) Where the constable returned the summons, "personally served and by copy on E. L. Wents, a managing agent of the defendant," *held*, that it gave the justice jurisdiction. (*N. Y. & E. R. R. v. Purdy*, 18 Barb., 574.)

The general railroad law provides (Laws of 1854, chap. 282, § 14,) that every railroad corporation in this state shall designate some one in each of the counties through which their road passes, on whom process to be issued by a justice peace, is to be served, and such designation is to be filed in the office of the clerk of the county, but if no such designation is filed, then service may be made on any local superintendent of repairs, freight agent, agent to sell tickets, or station keeper of such corporation, residing in such county, unless there is an

officer of such corporation residing in the county. But if there is a director residing in the county, the service must be made on such director. (*Wheeler v. N. Y. and H. R. R.*, 24 Barb., 414.)

In an action of tort against several defendants, the summons was served personally on only one, and upon the others by copy held erroneous. (*Farrell v. Calkins*, 10 Barb., 348.)

When the constable merely held up the summons and said to the defendant, "Here is a paper for you in the Marine Court," held, a defective service. (*Carrol v. Goslin*, 2 E. D. Smith, 376.)

Where a constable, to whom a summons had been delivered, by a justice of the peace, for service, brought it to the justice, and stated to him that he had personally served it on the defendant, and requested the justice to write his return thereon : and the justice thereupon took the summons and wrote this return upon it in the presence of the constable : "Returned personally served, November 14, 1855, by B. W., const., fees 75 cts," held, return was not sufficient. (*Reno v. Pinder*, 24 Barb., 423.)

A summons may be amended both in its date and return, after it has been served. (*Arnold v. Maltby*, 4 Denio, 498.) And a constable will be allowed to amend his return where he has made an error or mistake. (*Perry agt. Tynen*, 22 Barb., 137.)

A constable may not serve a summons on Sunday (2 R. S., 935), nor can he serve it in any city or town in this state, on an elector entitled to vote therein, on either of the days of a general or special election. (1 R. S., 418 ; Laws of 1842, ch. 130.)

The constable should make a prompt and accurate return of the service, because the justice cannot proceed until the return (unless there is an appearance), for it is on that his authority to try the cause depends, if the service be personal; and he must look to the same source for authority, to issue a warrant, if the service be by copy.

A civil warrant is a process issued by a justice directed to any constable of the county where the justice issuing the same resides, and commanding the constable to take the defendant, and bring him forthwith before such justice, to answer the plaintiff in the same warrant to be mentioned; and further requiring the constable, after he shall have arrested the defendant, to notify the plaintiff of such arrest. (3 R. S., 429 [229.])

The warrant is to be served by arresting the defendant, and taking him forthwith before the justice issuing the same. If such justice be, on the return thereof, absent, or unable to hear or try the cause, or it shall be made to appear to such justice, by the affidavit of such defendant, that such justice is a material witness in the cause, the constable shall take the defendant before the next justice of the city or town, who shall take cognizance of the cause and proceed thereon as if the warrant had been issued by him. (3 R. S., 429 [229.])

The constable must actually, that is personally arrest the defendant. No manual touching of the body is necessary to an arrest; it is sufficient if the party be within the power of the officer, and submit to the arrest. (*Gold v. Bissell*, 1 Wend., 210.)

The constable, unless he is specially appointed for that particular arrest, is not bound to show his warrant

within his proper district, though demanded. He should however, either before or at the moment of the arrest, make known in some form that he comes in his official character, and not in that of a wrong doer; as otherwise he may be lawfully resisted. After the party has submitted to the arrest, the constable, if required, is bound to inform him of the substance of the warrant or process. (*Bellows v. Shannon*, 2 Hill, 86.)

On making the arrest, the constable cannot take security from the defendant for his appearance, but he must bring him personally before the justice, if he do not, though the return be regular on its face, that the defendant is in custody, and it is made with the defendant's consent, a judgment rendered thereon will be void. The constable may allow the prisoner to go at large if he have him before the justice at the appointed time. And if he suffer him to go at large, or he escape, he may retake him within the time appointed. But should the constable suffer him to go at large, and some other officer arrest him, so that he could not have the defendant before the justice, the constable will be liable. (*Olmstead v. Raymond*, 6 Johns., 62.)

After the constable has arrested the defendant, if necessary, he may confine him in his house or other place of security, or, with the leave of the sheriff, place him in the jail for safe keeping, while he looks for assistance, or during the night, if the arrest is made in the evening; but, generally he is to take the prisoner forthwith on the most direct route before the justice who issued the warrant, and detain him there till the justice direct his release. If such justice, on the return of the warrant, be absent or unable to hear or

try the cause, or if it shall be made to appear to such justice by the affidavit of such defendant, that such justice is a material witness in the case, the constable shall take the defendant before the next justice of the city or town, who shall take cognizance of the cause, and proceed thereon as if the warrant had been issued by him. But in no case shall the defendant be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause shall be commenced, or unless it shall be delayed at the instance of the defendant. (3 R. S., 430 [229.])

If the justice who issued the warrant is unable to try the cause, and direct the constable to take him before another justice, and the second justice is unable to try the cause, the warrant is not then spent, nor is the defendant entitled to his discharge, but the constable must make a *bona fide* effort to find a magistrate to hear the cause. (*Arnold v. Steeves*, 10 Wend., 514.)

Although the period of twelve hours is fixed as the utmost extent of time within which a defendant may be detained after he is brought before the justice, the constable may, notwithstanding this provision of the statute, detain the defendant a reasonable time, for the purpose of taking him to the justice's office, and while making a *bona fide* effort to find the justice, and the time thus employed, is not to be counted as part of the twelve hours. If, however, he should be detained an unreasonable time before being carried before the justice, or while the constable is endeavoring to find the justice, or if he should be kept in custody longer than twelve hours after being brought before the jus-

tice, in either case, the constable and all others engaged in the illegal detention, would be liable to an action for false imprisonment. (1 Cow. Tr., 507, 2d ed.)

The constable may arrest the defendant wherever he can find him, unless the defendant is privileged from arrest. This privilege may be local, temporary, or personal.

A local privilege is where the defendant is in his own dwelling house, provided the outer door be shut. The defendant, in order to avoid an arrest, may shut the outer door of his own dwelling, and set the officer at defiance, and the officer has no right to open it without license, even though it be not fastened. This principle was carried so far, in one case, that where a deputy-sheriff knocked at the door of one Parke's, whose wife came and opened the door to see who was there, and the deputy and those with him pressed in with violence and arrested a man who lodged in the house, it was held that the first entry was unlawful, the opening of the door being occasioned by craft. (1 Cow. Tr., 512, 2d ed.) But if the constable find the outer door open, or otherwise enter peaceably, he may, especially after being refused admittance on demand, break open inner doors, in order to make the arrest; and even a steady boarder or lodger, who has a room by himself, is not protected from having the door of his room broken, on a warrant to arrest him, where the entry of the outer door is legal, for this is not his dwelling house within the meaning of the law. (*Lee v. Gansel*, Cowp., 1.) And where an officer having gained admittance through an outer door, found the chamber door of the defendant (not the owner of the house) secured, it was held

that he was justified in knocking in a window to arrive at the defendant, after having first informed him that he had process to serve. In this case the officer after having obtained an entrance to the house through the outer door went out of the house and entered at a window for the purpose of the arrest. (*Lloyd v. Sandilands*, 8 Taunt., 250.) If a man let out his house and reserve an inner room to himself which he occupied, the outer door of the house being open, the constable entered and broke open the inner door, and arrested him, *held*, that the arrest was justifiable, although he did not even demand an entrance at the inner door, or give notice that he had a warrant. (*Williams v. Spencer*, 5 Johns., 352.) And for this purpose the constable may enter any outer door which is open, a back door as well as a front door. (*Hubbard v. Mace*, 17 Johns., 127.) If the constable find the outer door of the house open he may enter peaceably on suspicion that the defendant is there, though it turn out to be a mistake. (*Hutchinson v. Birch*, 4 Taunt., 626; *Cooke v. Birt*, 5 Id., 765.)

A man's house is only a protection for himself, his family, permanent boarders and lodgers, and not for any one who may fly to it; and if a stranger fly there, the officer, after a denial, on request made, may break the outer door and arrest the fugitive. But if he break the door on mere suspicion to search for a stranger and do not find him, he will be a trespasser. (13 Mass. R., 520.)

Should the defendant after he had been arrested break away from the officer, and shut himself up in his own house, the officer is justifiable in his attempt to retake him, to break open the outer door of the house

of such party, without making known his business, demanding admission, and receiving a refusal, where the pursuit is fresh, and the party, consequently, aware of the object of the officer. (*Allen v. Martin*, 10 Wend., 300.)

The privilege which the law allows to a man's habitation, and which precludes the officer from entering, unless the outer door be open, does not extend to a store or barn disconnected from the dwelling and forming no part of the curtilage. (*Haggerty v. Wilber*, 16 Johns., 287.)

Some of the temporary privileges are, that no person can be arrested upon process by civil warrant on Sunday, such arrest is absolutely void, and all concerned in it are liable for false imprisonment. (2 R. S., 935; *Strong v. Elliot*, 8 Cow., 28.) And Sunday consists of twenty-four hours, commencing and ending at midnight. (*Pulling v. The People*, 8 Barb., 384.)

If a person be detained on Sunday against his will, to be arrested with process on Monday, the service will be void. (*Wells v. Gurney*, 8 Barn. and Cres., 769.) So, too, if a person be brought into the state on criminal process as a mere pretext and then arrested, he will be discharged. (*Williams v. Bacon*, 10 Wend., 636.) But if the defendant escape from the officer he may be retaken on Monday. (*Nicolls v. Ingersoll*, 7 Johns., 155.) And he may be retaken on the same process. (*Arnold v. Steeves*, 10 Wend., 515.)

The militia are exempt from arrest from sunrise to sunset on the days of parade. (1 R. S., 742 [303].)

So, too, electors are exempt from arrest on the day of any general or special election. (1 R. S., 418; Laws of 1842, ch. 130, § 4.)

Every person duly and in good faith subpoenaed as a

witness to attend any court, officer, commissioner or referee, or summoned to attend any judge, officer or commissioner, in any case where the attendance of such witness, may by law be enforced by attachment, or by commitment, shall be exonerated from arrest in any civil suit, while going to the place where he shall be required by such subpoena to attend, while remaining at such place and while returning therefrom (3 R. S., 685 ; m., 402): and a constable arresting a person summoned as a witness as above specified, would be deemed guilty of a contempt of court. (Id.)

Parties to a suit, during their attendance at court, and while going and returning, or before arbitrators or referees, or upon other judicial proceedings, are privileged from arrest. Nor is the party bound to go the nearest way home, if he do not abuse the privilege, for the purpose of going about other business of his own. (Grah. Pr., 129, 130, 2d ed.)

Attorneys, solicitors and counsellors, as well as all officers of courts of record, during their actual and necessary attendance on their respective courts, or on a reference, are also exempt from arrest (*Secor agt. Bell*, 18 Johns., 52), but this exemption does not extend beyond their necessary attendance on those courts. (*Gibbs agt. Loomis*, 10 Johns., 463.)

The officers of both houses of the Legislature are privileged from arrest while in actual attendance upon the house. (1 R. S., 455.)

The members of the legislature are privileged from arrest during their attendance upon, and for fourteen days before, and fourteen days after each meeting of the

same. (Id.) But this privilege will not avail after he has actually reached home. (*Corey v. Russell*, 4 Wend., 204.)

Senators and members of congress are privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same. (Const U. S., Art. 1, § 6.)

Persons who are permanently privileged from arrest are ambassadors, public ministers (except consuls) and their domestic servants (act of Congress, April 30th, 1790, §§ 25, 26), but this does not extend to ambassadors of a foreign country accredited to another foreign country, while passing through this state. (*Holbrook v. Henderson*, 4 Sandf., 619.) This privilege is accorded to the office, and not to the individual, and is founded upon the law of nations. (*Valarino v. Thompson*, 3 Sel., 576.) A consul of a foreign government may be arrested, and if he pleads his privilege he will be discharged, but he may waive it in a state court (*Flynn v. Stoughton*, 5 Barb., 115); the federal court alone having jurisdiction over consuls. (*Davis v. Packard et al.*, 7 Pet., 276.)

By federal statute, approved July 11, 1798, the non-commissioned officers, musicians, seamen and marines, who are or shall be enlisted into the service of the United States; and the non-commissioned officers and musicians who are or shall be enlisted into the army of the United States are exempted, during their term of service, from all personal arrests for any debt or contract: this was modified by a statute, approved March 16, 1802, § 23, that non-commissioned officers, musicians or privates are not subject to arrest for any debt under

the sum of twenty dollars, contracted before enlistment, nor for any debt contracted after enlistment.

An escape is either voluntary or negligent: voluntary when the officer permits the defendant to go at large, and negligent when the defendant escapes through the carelessness or inattention of the officer. (*Littlefield ads. Brown*, 1 Wend., 398.)

For an escape, either voluntary or negligent, an officer is liable. After a negligent escape, the officer may in all cases retake the defendant, before the return of the writ (*Atkinson v. Matteson*, 1 T. R., 172), even on Sunday (6 Mod., 231), and after voluntary escape on *mesne* process he may retake the defendant. (*Arnold v. Steeves*, 10 Wend., 514.) And the officer will not be liable to an action until it is time for the return of the writ. So that if the constable retake the defendant, or the defendant voluntarily return before the return day of the writ, the officer will be relieved from his liability. (*Middle Dist. Bank v. Deyo*, 6 Cow., 732.) But a consent to the escape by the plaintiff, after it has happened, and without consideration, will not relieve the officer. (*Powers v. Wilson*, 7 Cow., 274.)

If a constable who has a prisoner in his custody discharge him by order of a justice who has no authority, from the plaintiff or otherwise, he is liable to an action for an escape. (*Van Slyck v. Taylor*, 9 Johns., 146.) And where a constable having arrested a defendant, left him on his promising to follow him, and afterwards the defendant was arrested by a deputy sheriff and confined in jail, so that the constable could not retake him, *held*, a voluntary escape. (*Olmstead v. Raymond*, 6 Johns., 62.)

If any person obstruct or prevent an officer from retaking the defendant after his escape, the court, upon application on affidavit of the fact, will grant an attachment against them, the same as in all other cases of obstructing the execution of the process of the court. (Grah. Prac., 149, 2d ed.)

The constable who shall have arrested any person, while such person is in his custody, may not demand or receive any gratuity or reward, upon any pretence whatever, for keeping such prisoner out of jail, or for waiting for any other purpose; nor shall he charge such person any thing for any drink, victuals or other thing whatsoever, furnished or provided for such officer, or for such prisoner, at any tavern, ale-house, or public victualing or drinking-house (3 R. S., 724 [427]); if so he shall be deemed guilty of a misdemeanor and forfeit his office. (3 R. S., 725 [428].)

A constable who shall have arrested any prisoner in any county, may pass over, across and through such part of any other county or counties, as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered, according to the command of the process by which such arrest shall have been made. Such conveyance shall not in any case be deemed an escape; nor shall the prisoner so conveyed, or the officers having him in custody, be liable to arrest on any civil process while passing through such other county or counties. (Id., and see *Love v. Humphrey*, 9 Wend., 204.)

Every constable serving a warrant shall return thereupon, in writing, the manner in which he executed the

same, and the fact whether he has or has not notified the plaintiff. (3 R. S., 430 [229.])

The notice to the plaintiff should if convenient, be personal, it may be written or by parol, by a messenger or otherwise.

The return is to be indorsed on the process as in other cases; and if there be several defendants some of whom are not found, the return should so specify the same.

Should there be a mistake or error in the return, the constable may amend his return. (*Perry agt. Tynen*, 22 Barb., 137.)

Attachments which are issued by a justice of the peace commands any constable of the county, in which the justice resides, to attach so much of the goods and chattels of the debtors as will be sufficient to satisfy such debt, and safely to keep the same, in order to satisfy such debt, and safely to keep the same in order to satisfy any judgment that may be recovered on such attachment; and to make return of his proceedings thereon to the justice who issued the same, at a time therein to be specified. (3 R. S., 431 [230.])

Attachments are of two kinds: a long attachment and a short attachment; the long attachment is made returnable not less than six, nor more than twelve days from the date thereof (3 R. S., 431 [230]); the short attachment is made returnable not less than two nor more than four days from the date thereof. (3 R. S., 462; Laws of 1831, ch. 300, § 32.)

The constable receiving the attachment must execute the same, if a long attachment at least six days before the return day thereof, and if a short attachment at least two days before the return thereof and shall

attach and take into his custody, and safely keep, such part of the goods and chattels of the defendant as shall not be exempt from execution, and as shall be sufficient to satisfy the demand of the plaintiff. He shall immediately make an inventory of the property seized, and shall leave a copy of the attachment, and of the inventory, certified by him, at the last place of residence of the defendant; but if the defendant have no place of residence in the county where the goods and chattels are attached, such copy and inventory shall be left with the person in whose possession the said goods and chattels shall be found. (3 R. S., 431, 462 [230.] )

The mode of computing the time of service of attachments is the same as in the service of a summons. (*Ante*, p. 33.)

The kind of goods which may be taken by the constable, the manner in which a levy is made, what amounts to a levy, and the power of the officer in forcibly entering buildings to effect it, are governed in all respects by the rules applicable to enforcing executions against property, and will be treated of at large under that head.

On taking the goods, the constable is at his peril to see that they are safely kept. He is considered in the light of a bailee, and accountable to either party for ordinary negligence, by which either sustains any injury. This is upon the principle that the bailment is mutually beneficial, both to the bailer and bailee.

Ordinary negligence may be defined to be the want of ordinary diligence, or the omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns, called ordinary

care (*Edwards on Bail*, 44) so that if the goods be lost, or destroyed without the fault of the officer he is not accountable. (*Jenner v. Joliffe*, 6 John., 9.) And in order to protect himself he is to provide such convenient place for their safe keeping, as shall comport with his rights and duties in this respect.

The constable may, if he chooses, leave the property levied upon by him with the defendant, but it will be at his risk if it is lost or destroyed, unless by the act of God, or of the public enemies. (*Browning v. Hanford*, 5 Hill, 593.) Hence the officer, for his own security and protection, should cause the property attached to be removed, or another person than the defendant to be put in possession. If it is left with the defendant, he should obtain the assent of the plaintiff to the same, or take a receipt for the property of some one or more responsible persons, to the effect that he or they have received the property from the constable, who levied upon the same, and that he or they will return the property and every part thereof to the constable on his demand thereof, or pay the debt; such a receipt will be a valid agreement, and will not be within the statute against taking bonds under pretence of authority or corruptly. (See *Burrall v. Acker*, 23 Wend., 606.) Under such an agreement or receipt, the constable may repossess himself of the property, either for the purpose of selling it, or of returning it to the defendant. (Id.)

If the goods are not forthcoming on demand by the constable, when the receptor is a third party and not the defendant, he cannot seize other property of the defendant; he can only look to his receipt or under-

taking: and in such case it will be immaterial whether the property originally taken was sufficient to satisfy the demand or not. (See *Hoyt v. Hudson*, 12 John., 207.)

This, however, applies only to a case where the defendant has been divested of his property by the attachment, and not to a case where the defendant has repossessed himself of the property again; or where it was not his property; or it was taken on some lien secured prior to the attachment. (See *Peck v. Tiffany*, 2 Com., 451.)

No goods attached by a constable shall be removed by him, if a bond be given and delivered to such constable by any person, with sufficient surety, to be approved by the constable in a penalty double the sum stated in the attachment to have been sworn to by the plaintiff, conditioned that such goods and chattels shall be produced, to satisfy any execution that may be issued upon any judgment which shall be obtained by the plaintiff upon such attachment, within six months after the date of such bond. (3 R. S., 431 [231].) This bond is to be given to the constable and is for his security under the attachment.

Notwithstanding the giving of the bond by the debtor for its production, the constable, by his attachment has a lien upon the goods until the issuing of an execution, and a reasonable time thereafter to make a levy under the execution. If, however, in the meantime the property be removed by the debtor beyond the jurisdiction of the officer who issued the attachment, and it be there seized under another attachment, the lien is gone, notwithstanding the issuing of an execution under the first attachment. (*Sterling v. Welcome*, 20 Wend., 238.)

-If any person shall claim any goods or chattels

attached by a constable, he may, after such seizure, and at any time before execution shall have been issued upon the judgment obtained on such attachment, execute a bond to the plaintiff, with sureties to be approved by the constable, or by the justice who issued the attachment, in a penalty double the value of the property attached, conditioned that in a suit to be brought on such bond, within three months from the date, such claimant will establish that he was the owner of the goods seized, at the time of such seizure; and in case of his failure to do so, that he will pay the value of the goods so claimed, with interest. (3 R. S., 431 [231].) This bond must be double the value of the property attached, without reference to the amount claimed by the plaintiff in the action. (*Kamena v. Warner*, 6 Duer, 698; *S. C.*, 6 Abb., 193.)

This bond is to be given not to the constable, but to the plaintiff in the action: and the statute was designed for the benefit of the general owner of the goods attached, and cannot be given by a person who has made a levy on the goods, he having only a special property in them. (*Pierce et al. v. Kingsmill et al.*, 25 Barb., 631. Upon either of the bonds aforesaid being executed and delivered to the constable, he shall deliver up the property seized by him to the obligor in such bond. (3 R. S., 432 [231].)

The bond to the constable may be given with one surety; but the bond given by the claimant to the plaintiff should have at least two sureties. (*Smith v. McFall*, 18 Wend., 521.) The constable has a discretion to exercise as to the sufficiency of the security to be taken; and will undoubtedly be protected, if he exercise it in

good faith. If the surety or sureties offered, are strangers to the constable, or if he is unacquainted with their circumstances, or doubt their sufficiency, he should, for the purpose of ascertaining the fact, administer an oath to the person or persons so offered. If he do this, and the surety prove his sufficiency, the officer cannot be held liable, for he has done all the law requires of him. (1 Cow. Tr., 517.) If the justice approve the surety the constable of course will not be liable: but whenever the constable approves the bond his safer way will be to have the justification of the surety or sureties indorsed on the bond, and for the purpose of qualification the constable may administer an oath to the surety. (3 R. S., 866 [552].) The approval by the constable should be indorsed on the bond, though an acceptance of the bond by the constable without objection to the sufficiency of the surety, would be deemed an approval. (1 Cow. Tr., 518.)

There can be no difficulty in ascertaining the amount of penalty to be inserted in the bond given to prevent the removal of goods attached, as it must be double the amount specified in the attachment: but in the bond given by the claimant, the constable must take the responsibility of fixing the value of the property attached, and then double that value, and insert it in the bond by way of penalty.

Where it is inconvenient or impossible to give a bond, the constable may take a receipt, as there is nothing in the statute inhibiting the use of a receipt, and convenience, and in many instances necessity, require that the practice should be sustained. When a receipt is taken the property is still in his custody by intendment of law, and he is responsible for it in like manner and to

the same extent as though he had it in his actual possession. (*Harvey v. Lane*, 12 Wend., 565.)

The bond given should be sealed. Sealing in the law means an impression upon wax, or wafer, or some other tenacious substance, capable of being impressed; and a scrawl, with a pen, of L. S., or other sign at the end of the name, is not a seal. (*Van Santwood v. Sandford*, 12 Johns., 198.)

The attachment, issued at the instance of a *bona fide* creditor, and in a case warranted by law, when executed, creates a lien upon the goods attached, not only against the acts of the debtor himself, but against a subsequent attachment or execution of any other creditor; but the lien will be lost if the creditor does not prosecute his suit to judgment and execution with all due diligence (*Van Loan v. Kline*, 10 Johns., 129): and this remains so whether the goods are removed by the constable, or left with a receptor, or with the defendant upon taking a bond as security for its future delivery. (*Harvey v. Lane*, 12 Wend., 563.)

Having taken the goods, the constable is required immediately to make an inventory of the property seized: and to complete the service by serving a copy of the attachment and inventory, certified by him on the defendant personally, if he can be found in the county, if not so found, then the copy of the attachment and inventory is to be left at the last place of residence of the defendant; but if he have no place of residence in the county where the goods and chattels are attached, such copy and inventory are to be left with the person in whose possession the goods and chattels are found. (3 R. S., 431 [230].) The last place of residence must be

his usual place of residence, and leaving the copy at a store where the defendant had been a short time before is not a compliance with the statute. (*Dudley v. Staples*, 15 Johns., 196.)

Having served the attachment, the constable is to make a return thereof at a day therein named for that purpose, with all his proceedings thereon in writing, subscribed by him, with a copy of the inventory of the goods attached, certified by him, and with any bond which may have been executed and delivered to him either by the defendant or a third party. (3 R. S., 432 [231].)

The return should specify the particular manner in which the attachment was executed, the day of attaching the goods, and of serving or leaving the copy, ought also to be specified: if the defendant cannot be found that fact should be specifically stated (*Rosenfield v. Howard*, 15 Barb., 546), and, also, that a copy of the attachment had been left at the dwelling house, or other last place of abode of the defendant (*Willard v. Sperry*, 16 Johns., 121), or with the person, naming him in whose possession the goods were found; and it would be well to return that the copy, attachment and inventory served were certified by him (*Van Kirk v. Wilds*, 11 Barb., 520); if there be more than one defendant, and only a part of the defendants are found, the return should specify distinctly which were found, and which not found. (*McDoel v. Cook et al.*, 2 Com., 110.)

The return of the constable is, undoubtedly, equally conclusive with that upon a summons, it cannot be attacked collaterally (*Case v. Redfield*, 7 Wend., 398); and cannot be drawn in question except in an action

upon a false return, or upon indictment. (*Wheeler v. Lampman*, 14 Johns., 482.)

By the statute of 1860, and 1862. the jurisdiction of courts of justices of the peace, were enlarged by giving the right to recover by action in such courts the possession of personal property claimed, the value of which shall not exceed the sum of two hundred dollars.

The plaintiff in such action, at the time of issuing the summons, but not afterwards, may claim the immediate delivery of such property, as hereinafter provided.

Before any process shall be issued in an action to recover the possession of personal property, the plaintiff, his agent or attorney, shall make proof by affidavit showing :

1. That the plaintiff is the owner, or entitled to immediate possession of the property claimed, particularly describing the same.

2. That such property is wrongfully withheld or detained by the defendant.

3. The cause of such detention or withholding thereof, according to the best knowledge, information and belief of the person making the affidavit.

4. That said personal property has not been taken for any tax, fine, or assessment, pursuant to statute, or seized by virtue of an execution or attachment against the property of said plaintiff; or if so seized, that it is exempt from such seizure by statute.

5. The actual value of said property.

On receipt of such affidavit, and an undertaking in writing, executed by one or more sufficient sureties, to be approved by the justice of the peace before whom such an action is commenced, to the effect that they are bound in double the value of such property as stated

in said affidavit for the prosecution of said action, and for the return of said property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against said plaintiff; the justice shall indorse upon said affidavit a direction to any constable of the county in which said justice shall reside, requiring said constable to take the property described therein from the defendant, and keep the same to be disposed of according to law; and the said justice shall at the same time issue a summons directed to the defendant, and requiring him to appear before said justice at a time and place to be therein specified, and not more than twelve days from the date thereof, to answer the complaint of said plaintiff; and the said summons shall contain a notice to the defendant, that in case he shall fail to appear at the time and place therein mentioned, the plaintiff will have judgment for the possession of the property described in said affidavit, with the costs and disbursements of said action.

The constable, to whom said affidavit, indorsement and summons shall be delivered, shall forthwith take the property described in said affidavit, if he can find the same, and shall keep the same in his custody. He shall thereupon, without delay, serve upon said defendant a copy of such affidavit, notice and summons, by delivering the same to him personally, if he can be found in said county; if not found, to the agent of the defendant in whose possession said property shall be found; if neither can be found, by leaving such copies at the usual place of abode of the defendant, with some person of suitable age and discretion; and shall forthwith make a return

of his proceedings thereon, and the manner of serving the same to the justice who issued said summons.

The defendant may at any time after such service, and at least two days before the return day of said summons,\* serve upon the plaintiff or constable who made such service, a notice in writing that he excepts to the sureties in said bond or undertaking; and if he fail to do so, all objections thereto shall be waived. If such notice be served the sureties shall justify, or the plaintiff give new sureties on the return day of said summons, who shall then appear and justify, or said justice shall order said property delivered to defendant, and shall also render judgment for defendant's costs and disbursements.

At any time before the return day of said summons, the said defendant may, if he has not excepted to plaintiff's sureties, require the return of said property to him, upon giving to the plaintiff, and filing with the same justice, a written undertaking with one or more sureties, who shall justify before said justice on the return day of said summons, to the effect that they are bound in double the value of said property, as stated in plaintiff's affidavit for the delivery thereof to said plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against said defendant, and if such return be not required before the return day of said summons the property shall be delivered to said plaintiff. (Code, § 53.)

The sureties must each of them be a resident and householder, or freeholder, within this state. They must each be worth the amount specified in the affidavit, exclusive of property exempt from execution, but the

justice of the peace on justification, may allow more than two bail to justify severally in amounts less than that expressed in the affidavit, if the whole justification be equivalent to that of two sufficient bail. (Code, § 194.)

For the purpose of justification, each of the bail shall attend before the justice of the peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the justice of the peace, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff. (Code, § 195.)

If the property or any part thereof be concealed in a building or inclosure, the constable shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and if necessary he may call to his aid the power of his county. (Code, § 214.)

When the constable shall have taken property, as in the statute provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same. (Code, § 215.)

If the property taken be claimed by any other person than the defendant, or his agent, and such person shall make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the constable, the constable shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the constable against such claim by an undertaking, executed by two sufficient

sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, and freeholders and householders of the county. And no claim to such property by any other person than the defendant or his agent, shall be valid against the constable unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. (Code, § 216.)

The return of the constable should show fully and specifically every thing done by him in regard to taking the property : for if the property shall not have been delivered to plaintiff by the consent of the defendant, or the defendant by answer, shall claim a return thereof, the justice or jury shall assess the value thereof, and the injury sustained by the prevailing party by reason of the taking or detention thereof, and the justice shall render judgment accordingly, with costs and disbursements. And if it shall appear by the return of the constable that he had taken the property described in the plaintiff's affidavit, and that defendant cannot be found, and has no last place of abode in said county, or that no agent of defendant could be found on whom service could be made, the justice may proceed with the cause in the same manner as though there had been a personal service.

Notwithstanding the justice passes upon the sufficiency of the affidavit, the constable should examine the papers and see that all the requisitions of the statute have been complied with, before he commences to enforce the order of the justice. If there should be a deficiency in the affidavit, it should be corrected and amended, as such deficiency therein might be of such a nature that

it would fail to confer jurisdiction on the justice, and the constable in the enforcing of the order be guilty of trespass.

In case the constable receives from the defendant a notice that he excepts to the sureties of the bond or undertaking of the plaintiff, he should hand such notice to the plaintiff, or give the plaintiff information of his having received such notice, excepting to the sureties, in order that the plaintiff may have his sureties ready on the return day of the summons to justify before the justice.

Where a third party and not the defendant claims the property, and the plaintiff gives additional security to protect the constable against the claim of such third party, the constable should be careful and see that the sureties so given are both freeholders and householders of the county. (Code, § 216.)

A subpœna may be served either by a constable or any other person : and it shall be served by reading the same, or stating the contents, to the witness, and by paying or tendering the fees allowed by law for one day's attendance of such witness. (3 R. S., 439.)

When the justice has issued the subpœna and inserted one name therein, the party or his agent may insert as many others as he chooses.

Where a constable with a subpœna, in seeking for a witness, finds the witness in his house and the door open he has a license to enter, and, having entered peaceably, he has a right to use all the force that may be necessary to enable him to serve the subpœna. (*Hager v. Danforth*, 20 Barb., 16.)

The service must be personal, on the witness, and in reasonable time before the hour of trial, that he may

suffer the less inconvenience from his attendance on the court, and this must be sufficiently early that the witness may travel according to the usual modes of public conveyance, without being required to travel on the Sabbath. (*Wilkie v. Chadwick*, 13 Wend., 49.) And even though the distance to travel be not far, yet the witness should have sufficient notice in order that he may so arrange his business without great inconvenience to himself—as where at noon on Saturday, a resident of New York was subpoenaed to testify in the afternoon of that day, he at the time being about to leave the city with his family, who were already on board the steamboat, declined to attend on that day but offered to attend on the following Monday, the court refused to punish him, holding that the party was in fault for deferring the service of the subpoena. (*Chalmers v. Melville*, 1 E. D. Smith, 503.) So that the better way for the constable is to serve the subpoena as soon as he conveniently can after receiving it.

If the witness should attempt to evade the hearing of the subpoena by going away or otherwise, still the service would be good if the constable should do all within his power to make the service complete in accordance with the statute.

In addition to reading the subpoena the constable must pay or tender the witness his fees, because, if the fees are not paid the witness is not bound to attend, unless he has waived the payment of the same. The fees are twenty-five cents per day (Laws 1866), when the witness is from the same county, but when from any other place than the same county twenty-five cents. (3 R. S. 451 [265].)

And there must be an offer of the money, unless it be

dispensed with by the express declaration, or equivalent act of the witness, and then a mere offer to pay is not sufficient; the tender is a production and manual offer of the money, and regularly it should be counted down. (See *Bakeman v. Pooler*, 15 Wend., 637.) Indeed, it is unsafe to dispense with the actual production of it, unless the constable be told expressly by the witness not to produce it.

The constable having served the subpoena, should indorse his return thereon, and return it to the justice; and if the witness is privileged from arrest, and that fact should be known to the constable, it would be well for him to report that fact to the justice.

If the witness fail to appear at the time at which he was summoned, the justice may issue an attachment to compel his attendance, and the constable is the proper person to execute the attachment.

The attachment is to be executed in the same manner as a warrant; and the fees of the officers for issuing and serving the same shall be paid by the person against whom the same shall have been issued, unless he shall show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment, shall pay all costs of such attachment and the service of the same. (3 R. S., 439 [241].)

The justice should determine on the return of the attachment whether the witness, or the party should pay the costs.

The statute contains no provision directing the manner in which the payment of the costs of issuing and serving the attachment shall be enforced; but on the return of the attachment, the justice should determine whether

the witness, or the party, should pay the costs. In case he determine the witness shall pay them, they may be collected of him by a suit in the name of the party requiring the attachment, and he would be accountable to the justice and constable respectively for their fees, in the same manner as for other services rendered for him; and the party would be accountable, in like manner, to the justice and constable, if the justice should determine that he should pay the costs. (2 Cow. Tr., 864, 2d ed.)

The constable is the proper person to execute a venire.

Upon the demand of a trial by jury, the justice shall issue a venire directed to any constable of the county wherein the cause is to be tried, commanding him to summon twelve good and lawful men in the town where such justice resides, qualified to serve as jurors, and not exempt from serving on juries in courts of record, who shall be in nowise of kin to the plaintiff or defendant, nor interested in such suit, to appear before such justice at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such venire. No constable who shall have been employed to act, or who shall have acted as attorney or agent in respect to any claim or matter in controversy, shall summon any jury, in any justices' court, which shall be summoned to try any question in relation to any such claim or matter.

If the action in which such issue shall be joined, shall be between two towns, the venire shall direct the constable to summon twelve good and lawful men of the county, qualified and not exempt, and not interested, as hereinbefore provided, to make a jury for the trial of such action.

The justice issuing the venire is to cause the same to be delivered to some constable of the county, disinterested between the parties, and against whom no reasonable objection shall have been made by either party.

The constable to whom any venire shall be delivered, shall execute the same fairly and impartially, and shall not summon any person whom he has reason to believe biased or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return to the justice.

At the trial of the cause, the names of the persons returned, and who shall appear, shall be respectively written on several and distinct pieces of paper, as nearly of one size as may be; and the constable, in the presence of the justice, shall roll up or fold such pieces of paper, as nearly as may be, in the same manner, and put them together in a box, or some convenient thing. The justice shall then draw out six (or such number as the parties may have agreed upon) of such papers, one after another to form the jury. If a sufficient number of competent jurors shall not be drawn, the justice may supply the deficiency by directing the constable to summon any of the bystanders, or others, who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause. (3 R. S., 441, 442 [242, 243].)

The constable should not attempt to execute a venire in those cases where, if executed by him, there would be a challenge to the array. A challenge to the array is an objection to all the jurors returned by the constable collectively (Co. Litt., 156, 158), not for any defect in

them, but for some partiality or default in the constable who summoned them. (3 Bl. Com., 359.) This is either a principal challenge, or a challenge to the favor.

At common law, the causes of *principal challenge* to the array extended to a great variety of cases, implying necessarily, a bias on the part of the constable, or returning officer as that the officer, who summoned the jurors, was of kindred or affinity to either party, within the ninth degree (South., 364); that one or more of the jury were returned at the nomination of the plaintiff or defendant, that the constable is liable to be distrained upon by the plaintiff or defendant, or is his servant, counsellor or attorney, or acts as his advocate (*Baylis v. Lucas*, Cowp., 112); unless indeed the parties agree that he should summon the jury notwithstanding such objection exists (*Watkins v. Weaver*, 10 Johns., 107); or if the constable be any way interested in the question to be tried, and this, whether it be in the cause to be tried, or in any other cause or matter depending on the same point of controversy, or was an arbitrator in the same matter, and had treated thereof. (Co. Litt., 156.)

The causes of challenge to the array for *favor*, are such as imply at least a probability of bias or partiality in the constable, but do not amount to a principal challenge. Thus that the plaintiff or defendant is tenant to the constable; or that the son of the constable has married the daughter of the plaintiff or defendant: or the like (Co. Litt., 156); or that the constable and party are fellow servants (Dyer, 367, Pl. 40); or the party servant to the constable (Cro. Eliz., 581); and so of any cause from which the triers may infer that he is not

entirely indifferent between the parties. (2 Cow. Tr., 887, 2d ed.)

But where the cause is for interest, partiality or affinity, the party cannot, of course, object or challenge to the array, or to the polls, unless the bias is against him. It does not lie in his mouth to challenge, because the interest, &c., is in his own favor.

The venire must be served personally, and cannot be served by leaving a copy, and may be served like a subpoena, by reading it to the juror, or stating its contents. Jurors, like witnesses, ought to have a reasonable notice, that their attendance on the return of the venire may be as little prejudicial to themselves as possible.

The constable is to summon only those persons who are qualified to serve as jurors; described in the statute as follows:

1. Male inhabitants of the town, not exempt from serving on juries.

2. Of the age of twenty-one years, or upwards, and under sixty years old.

3. Who are at the time assessed for personal property, belonging to them in their own right, to the amount of two hundred and fifty dollars, or who shall have a freehold estate in real property in the county, belonging to them in their own right, or in the right of their wives, to the value of one hundred and fifty dollars.

4. In the possession of their natural faculties, and not infirm or decrepit.

5. Free from all legal exceptions, of fair character, of approved integrity, of sound judgment and well informed.

Every person residing in either of the counties of Niagara, Erie, Chautauqua, Cattaraugus, Allegany, Gen-

esee, Orleans, Monroe, Livingston, Jefferson, Lewis, St. Lawrence, Steuben and Franklin, who does not possess either of the qualifications specified in the third of the above subdivisions, but is qualified in all other respects, and who shall have been assessed on the last assessment-roll of the town for land in his possession, which he holds under contract for the purchase thereof, upon which improvements shall have been made to the value of one hundred and fifty dollars, and who owns such improvements, is qualified to serve as a juror. Every person residing on the New Stockbridge tract, in the towns of Vernon and Augusta, in the county of Oneida, Lenox and Smithfield, in the county of Madison, who is in possession of lands under contract for purchase, and is worth one hundred and fifty dollars in personal property, or shall have made improvements upon such lands to that amount, is, if otherwise qualified according to law, qualified to serve as a juror in any court holden before a justice of the peace within the town. (3 R. S., 695, 696 [411, 412.] In the city of New York it shall not be a necessary qualification for a juror, that he shall actually be assessed in said city. (3 R. S., 697; Laws 1847, chap. 495.)

The constable should be particular and not summon any persons who are exempt from serving on the jury; or any persons whom the court would excuse for any statutory reason.

The following persons are exempt: every collector of tolls, the clerks of each collector, not exceeding two, having the collector's certificate that they are actually employed by him, and all superintendents of repairs, lock-tenders, inspectors of boats and weighmasters, while

actually engaged in their respective employment on the canals, while the same are navigable (1 R. S., 639 [250]) : the superintendent and each of his deputies, and all persons employed in attendance upon any works for the manufacture of coarse salt (1 R. S., 680 [278]) : all officers, non-commissioned officers, musicians and privates of uniformed militia, who shall have served for the period of seven years (1 R. S., 772 ; Laws of 1849, ch. 307) : the keeper of every poor house, alms house, or other place provided for the reception and support of the poor (2 R. S., 855 [631]) : every person holding office under and by virtue of the metropolitan police law in the counties of New York, Kings, Westchester and Richmond (2 R. S., 1011 ; Laws of 1857, ch. 569) : all firemen in the city of New York, who actually perform all the duties of such firemen (3 R. S., 700 ; Laws of 1847, ch. 495) : persons whose religious faith and practice is to keep the seventh day of the week are exempt from serving as jurors on Saturday only (Laws of 1847, ch. 349) : firemen who are regularly enrolled and recognized by the authorities of several cities and villages of this state during the time of their service, and forever, after they have served five years (Laws of 1848, ch. 188), and aliens. (3 R. S., p. 6 [721].)

The court shall discharge any person from serving on a jury in the following cases :

1. When it shall satisfactorily appear that such person is not at the time the owner, in his own right or in the right of his wife, of a freehold estate in real property, situated within the county, of the value of one hundred and fifty dollars, and is not the owner of personal property to the value of two hundred and fifty dollars, or

is not possessed of the property qualification required in the preceding counties specified. (Pages 67, 68.)

2. When it shall appear that such person is under twenty-one years of age, or over sixty years of age, or that he is not in possession of any of his rational faculties.

3. When there is any legal exception against such person.

4. When such person is a non-commissioned officer, musician, or private of any uniform company or troop, and is duly equipped and uniformed according to law, and shall claim such exemption. The evidence of such exemption shall be the certificate of the commanding officer of the company or troop, that the person claiming the same is a member of such company, and is duly equipped and uniformed according to law. Such certificate must be dated within three months of the time of presenting the same, and the signature must be verified by oath. Every such certificate shall be filed with the clerk of the court to which it shall be offered.

5. When such person is a member of any company of firemen duly organized according to law.

6. When such person is in the actual employment of any glass, cotton, linen, woolen or iron manufacturing company, by the year, month, or season.

7. When such person is a superintendent, engineer or collector of any canal authorized by the laws of this state, any portion of which shall be actually constructed and navigated.

8. When such person is a minister of the gospel or teacher in any college or academy, or when such person is or shall be exempted by law from serving on juries.

The court to which any person shall be returned as a juror, shall excuse such juror from serving at such court, whenever it shall appear :

1. That he is a practising physician, and has patients requiring his attention ; or

2. That he is a surrogate, or justice of the peace, or executes any other civil office, the duties of which are at the time, inconsistent with his attendance as a juror.

3. That he is a teacher in any school, actually employed and serving as such.

4. When, for any other reason, the interests of the public, or of the individual juror, will be materially injured by such attendance, or his own health, or that of any of the members of his family, requires his absence from such court. (3 R. S., 713, 714 [415, 416].)

The constable having summoned the jury personally should make a full return thereof, which he shall certify and annex to the venire, and return to the justice. (3 R. S., 441 [243].)

If a sufficient number of competent jurors shall not appear, the constable will be directed to summon others from the bystanders, or by another venire, which shall be executed in the same manuer as the first. (3 R. S., 442 [243].)

After the trial of the cause, that is after hearing the proofs and allegations of the parties, the jury are to be kept together in some convenient place, under the charge of a constable, until they all agree upon their verdict ; and for that purpose the justice shall administer to such constable the following oath : " You swear in the presence of Almighty God, that you will, to the utmost of your ability, keep the persons sworn as jurors

on this trial together in some private and convenient place, without any meat or drink except such as shall be ordered by me; that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by my order, or to ask them whether they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict they have agreed upon." (3 R. S., 442 [244].)

It is absolutely necessary that the justice administer to the constable the statutory oath. (*Coughnet v. Eastenbrook*, 11 Johns., 532,) and should he administer an oath different from the one prescribed by statute, the error would be fatal. (*Day v. Wilber*, 2 Caines, 135.) But should the jury render their verdict in the presence of the justice and without leaving their seats, it is not necessary that a constable be placed in charge of them. (*Fink v. Hall*, 8 Johns., 438.)

The duties referred to in the allegations of the oath must be strictly attended to on the part of the constable; he must see that they are not furnished with refreshments, and especially with liquor by either party (see *Tower v. Hewett*, 11 Johns., 134), he must not allow any one to have any communication with them, not even the justice should be allowed to give them instructions without the express consent of the parties themselves (*Moody v. Pomeroy*, 4 Denio, 115), though he may allow the justice to give them further instructions upon the law with the permission of both parties (*Rogers v. Moulthrop*, 13 Wend., 274), and if the jury wish he

may re-examine a witness, the parties consenting or being present (*Henlow v. Leonard*, 7 Johns., 200), nor should he allow the jury to take with them the minutes of the testimony taken by the counsel on the trial (*Durfee v. Eveland*, 8 Barb., 46), or the minutes of the justice (*Neil v. Abel et al.*, 24 Wend., 185), unless the parties consent thereto. (*Hancock v. Salmon*, 8 Barb., 564.)

Whenever the jury come into court, the constable should see that both plaintiff and defendant are present, for if the jury should wish for further instructions on the law, or to hear further evidence on any branch of the case, it is necessary that both parties be present. (See *Blackley v. Sheldon*, 7 Johns., 32.)

An execution may be issued upon a judgment rendered in a justices' court, at any time within five years after the rendition thereof, and shall be returnable sixty days from the date of the same. (Code, § 64.) It shall be directed to any constable within the same county, and shall command him to levy the debt or damages, and costs, of the goods and chattels of the person against whom the same shall be issued (excepting such goods and chattels as are by law exempted from execution), and to bring the money at a certain time (sixty days from the date) and place therein to be mentioned before such justice, to render to the party who recovered the same: and when the execution is against the body of the person of the defendant, it shall also command the constable, that if no goods or chattels can be found, or not sufficient to satisfy such execution, to take the body of the person against whom the execution shall be issued, and convey him to the common jail of the county, there

to remain until such execution shall be satisfied and paid. (3 R. S., 446 [249].)

The execution is to be made returnable sixty days from the date (*Bander v. Burley*, 15 Barb., 604), and it will be good if directed to be returned "*within* sixty days from the date. (*Price v. Shipps*, 16 Barb., 585.) And it must be dated on the day when it actually issued (3 R. S., 447 [251]), and must be entirely filled up by the justice, leaving no blank either in the date or otherwise at the time of its delivery to the officer or it will be void (3 R. S., 454 [267]), and the justice cannot amend it after it has been executed. (*Toof v. Bentley*, 5 Wend., 276.)

When a judgment shall be obtained against joint debtors, upon process which was not served upon all the defendants, execution may be issued in form against all; but the justice shall indorse thereon the names of such of the defendants, who did not appear in the suit, as were not served with process of warrant, summons or attachment. And such execution shall not be served upon the persons of the defendants whose names are so indorsed thereon: nor shall it be levied on the sole property of any such defendant; but it may be collected of the personal property of any such defendant, owned by him as a partner of the other defendant appearing or served with process, or with any of them. (3 R. S., 447 [251].)

If any execution, issued by a justice of the peace upon a judgment rendered by him, be not satisfied, it may from time to time be renewed by such justice, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. (*Visger v. Ward*,

1 Wend., 551.) If any part of such execution has been satisfied, the indorsement or renewal shall express the sum due on the execution. Every such indorsement shall be deemed to renew the execution in full force in all respects, for sixty days from the date thereof. If an execution be returned unsatisfied, in whole or in part, a further execution for the amount remaining due may be issued. (3 R. S., 448 [252].)

If an execution should be issued and enforced after the judgment had been paid, the constable would not be liable as a trespasser if the execution was right on its face. (*Lewis v. Palmer et al.*, 6 Wend., 367.)

Whenever any recovery shall be had before a justice of the peace for any penalty or forfeiture, relating to fisheries, the justice shall indorse upon such execution the cause for which such judgment was rendered; and in case no goods or chattels can be found to satisfy such execution, the constable having the same shall commit such defendant to the jail of the county, and shall deliver to the keeper thereof a certified copy of such execution and indorsement, by virtue of which, such keeper shall detain such defendant for a period not exceeding sixty days, without allowing him the benefit of the liberties of such jail. (3 R. S., 447 [251].)

An execution issued by a justice of the peace after five years from the entry of judgment, without leave of the court, is void. (See Code, § 64, sub. 12, and *Bates agt. James*, 3 Duer, 45.)

When the constable receives the execution he must at once proceed to take possession of the property. The mere making a memorandum of the levy which he annexes to or places with the execution, is not sufficient;

though, if the defendant gave him an account of the property, it would be a good levy as against him, but not as against third parties. (*Dresser v. Ainsworth*, 9 Barb., 619; *Price v. Shipps*, 16 Barb., 585.) He "must take actual possession," which, although the goods are present, can only be done by manual acts, or by an oral assertion that a levy is intended and which is acquiesced in by those who are present and interested in the question. A levy cannot rest in a mere undivulged intention to seize property. Something more is required: there must be possessory acts to indicate a levy, or it must be asserted by word of mouth. So that what is thus done by the officer, if not justified by the process in his hands, will make him a trespasser. (*Camp v. Chamberlain*, 5 Denio, 198.)

The constable after taking the goods and chattels into his custody, by virtue of an execution, shall indorse thereon the time of levying the same, and immediately give public notice by advertisement, signed by himself and put up at three public places in the city or town, where such goods and chattels shall be taken, of the time and place within such city or town, when and where they will be exposed to sale. Such notice shall describe the goods and chattels taken, and shall be put up at least five days before the time appointed for the sale.

At the time and place so appointed, if the goods and chattels be present and pointed out to the inspection and examination of the bidders, the constable shall expose them to sale at vendue, to the highest bidder. He shall return the execution and pay the debt or damages, and costs levied, to the justice who issued the

same, returning the overplus, if any, to the person whom the execution issued. (3 R. S., 448 [252].)

The constable should use every endeavor to make the property within the lifetime of the execution. But if he should have the property on hand at the time the first execution has nearly run out, the execution may be renewed on the last day it has to run, and being so renewed, it will retain its lien on goods before levied upon under it (*Chapman v. Fuller*, 7 Barb., 70), and the sale may be had under the renewal. (*People v. Hopson*, 1 Denio, 574.)

The constable will be liable for damages if there is property of the defendant and he does not have the money on the return day of the execution, unless he has a good and sufficient excuse therefor. If he has any doubt as to whether the property found is the property of the defendant, he may summon a jury to try the right of property before making his return. (*Platt v. Sherry*, 7 Wend., 236.)

Where a constable summoned a jury of inquiry as to the claim to the property levied on; it was held that the inquisition was no justification in action of trespass brought against the constable, but went only in mitigation of damages, though such inquisition may, in many cases, justify the officer for making a return of *nulla bona*. (*Townsend v. Phillip*, 10 Johns., 98.) And a plaintiff in an execution is not bound to tender a bond of indemnity until after a jury has passed upon the question of property. (*Platts v. Sherry*, 7 Wend., 236.) But if the plaintiff in the execution, offer, in writing, to indemnify the constable, he is bound to proceed and sell,

and cannot excuse himself by taking an inquisition. (*Van Cleef v. Fleet*, 15 Johns., 147.)

The conduct of constables, upon executions from the justices' court, must be governed by the same law as that of sheriffs upon executions from the higher courts, where there is no statute regulation. He cannot recover his fees where he has levied upon property and returns that it remains on hand for want of buyers. To entitle him to his fees, he must make the money, except where he is prevented by the act of the plaintiff or by operation of law. He must levy and sell in due season. If no bidders attend, he should postpone the sale, and give notice to the plaintiff, who should attend and bid himself. And if he do not, the constable will be excused, in returning that the property remains on hand for want of buyers. So he would be excused in making such a return, if he could not sell the property, but at a great sacrifice. Yet after he has made such a return, he must proceed and sell, the first opportunity. (*Pixley v. Butts*, 2 Cow., 421.)

The constable should always make an inventory of the property levied upon, but the making of an inventory is not absolutely necessary to constitute a valid levy under the execution. (*Watts v. Cleveland*, 3 E. D. Smith, 553.)

Where the goods are in a store, barn, or warehouse not annexed to a dwelling-house, or forming any part of the curtilage, the constable may break open the door of such building and take possession of the goods and make an inventory of them, or of a sufficient portion to satisfy the execution. (*Haggerty v. Wilber*, 16 Johns., 287.) But he may not enter unbidden a dwelling-house

where the outer door is closed merely by a latch in the ordinary way (*Curtis v. Hubbard*, 1 Hill, 336), and should he do so he may be resisted, not only by the owner of the house, but also by a guest of the owner, in his absence. (*Curtis v. Hubbard*, 4 Hill, 437.)

The seizure of the goods, creates a lien thereon which the officer may enforce against all parties or persons (*Dezell v. Odell*, 3 Hill, 215), but as soon as the judgment is paid the lien ceases. The general property still remains in the debtor, and he is not divested of it until a sale. (See *Green v. Burke*, 23 Wend., 490.)

Where an officer takes goods by virtue of an execution he may remove them to his own warehouse, or he may if he have confidence in the owner leave them with him, or he may deliver them to a third party to be kept, on his giving a receipt to return them, and when he has once levied under the execution, property sufficient to satisfy it, he cannot make a second levy. (*Hoyt v. Hudson*, 12 Johns., 207.)

Whenever any execution shall be issued against the property of any person, his goods and chattels, situated within the jurisdiction of the officer to whom such execution shall be delivered, shall be bound only from the time of the delivery of the same to be executed (3 R. S., 645; *Haggerty v. Wilber*, 16 Johns., 287.) And where several executions are placed in the hands of an officer they are to have priority in the order in which they came to the hands of the officer. (*Camp v. Chamberlain*, 5 Denio, 198.)

But any execution issued out of a court of justice of the peace, if actually levied, shall have preference over any other execution issued out of any court,

whether of record or not, which shall not have been previously levied. (3 R. S., 645 [366].)

A levy under one execution inures as a levy under one or more other executions which afterwards comes to his hand, and the levy would be good although at the time he received the second execution the first one remained dormant in his hands by reason of instructions for a delay, the officer by the first levy having the custody and control of the property. (*Peck v. Tiffany*, 2 Com., 451.)

When the property levied upon is left in the possession of the defendant, the officer may sell on the defendant's premises, and third persons may rightfully attend there as bidders. (*People v. Hopson*, 1 Denio, 575.)

Where the execution is against any person who is a tenant the constable may levy on any property which the tenant has a right to remove (*Stewart v. Doughty*, 9 Johns., 108); such as growing grass (*Smith v. Jenks*, 1 Denio, 580); wheat in the sheaf (*Whipple v. Foote*, 2 Johns., 418); and growing trees that have been sold by the owner of the land, although not at the time cut down. (*Bank of Lansingburgh v. Crary*, 1 Barb., 542.)

Such articles as are properly fixtures, and form a part of the realty, cannot be taken on execution; but when they have been separated from the realty by a person authorized to separate them, they become personal property, and may be taken (*Morgan v. Varick*, 8 Wend., 587), but if taken from the realty for the purpose of preservation and to be returned to the same place in their season, as hop poles, they still remain real estate and cannot be levied on. (*Bishop v. Bishop*, 1 Ker., 123.) But stoves, mills, and machinery, and presses

not permanently attached to the freehold, may be levied on. (*Walker v. Sherman*, 20 Wend., 636; *Freeland v. Southworth*, 24 Wend., 191; *Heermance v. Vernoy*, 6 Johns., 5; *Holmes v. Tremper*, 20 Johns., 29.)

Where land is let for agricultural purposes, the manure made on the farm belongs to it, and not to the tenant, unless there is a stipulation or custom to the contrary (*Middlebrook v. Corwin*, 15 Wend., 169), and that whether lying in the barn-yard or is in heaps. (*Goodrich v. Jones*, 2 Hill., 142.) Fencing materials on a farm which have been used as part of the fences, but are temporarily detached, without any intent of diverting them from their use as such, are a part of the freehold, and neither fences nor rails can be taken on an execution against the tenant. (Id.)

Upon executions against the property of a defendant the constable shall levy upon any current gold or silver coin belonging to such defendant, and shall pay and return the same as so much money collected, without exposing the same for sale at auction. And upon such executions, the officer may levy upon and sell any bills or other evidences of debt, issued by any moneyed corporation, or by the government of the United States, and circulated as money, which shall belong to the defendant in such execution. (3 R. S., 645 [366].)

But a chose in action cannot be levied upon as a promissory note (*Ingalls agt. Lord*, 1 Cow., 240), or bank shares, or shares in a public library. (*Denton v. Livingston*, 9 Johns., 97.)

When goods or chattels shall be pledged for the payment of money, or the performance of any contract or agreement, the right and interest in such goods, of the

person making such pledge, may be sold on execution against him, and the purchaser shall acquire all the right and interest of the defendant, and shall be entitled to the possession of such goods and chattels, on complying with the terms and conditions of the pledge. (3 R. S., 645 [366]; *White v. Cole*, 24 Wend., 141.)

Chattels which are mortgaged may be seized and the interest of the mortgagor therein sold on an execution against the mortgagor, where they are in his possession, and he, at the time of the seizure and sale, is, by the terms of the mortgage, entitled to their possession for a definite period. (*Hull v. Carnley*, shff., 1 Ker., 501.) But if the mortgagee has an immediate right of possession, the property cannot be levied on and sold. (*S. C.*, 2 Duer, 99.) The sale, however, is confined to the interest of the mortgagor and conveys his right subject to that of the mortgagee. (Id.)

The right and interest of a pledgor cannot be sold on execution unless the goods be present and within the view of those attending the sale: and the constable may take actual possession of the goods and hold them until the sale. And after the sale the constable cannot deliver the possession of the goods, as the pledgee is entitled to the possession of the goods until the purchaser redeems them according to the condition of the pledge. (*Bakewell v. Ellsworth*, 6 Hill, 484, and see *Stief v. Hart*, 1 Com., 20.)

A constable shall not levy upon or sell any property, or imprison a defendant, upon any execution, after the time limited therein for its return, unless such execution shall have been renewed. Nor shall any constable do any act under a renewed execution, after the expira-

tion of the time or times for which the same may have been renewed. (3 R. S., 450 [253]; *Bander v. Burley*, 15 Barb., 604.)

If the term of office of the constable expire before the time within which the collection or return of such execution is required by law, he must and may proceed in all matters relative to said execution, in the same manner as if the term of office of such constable had not expired. (3 R. S., 461 [274]; *Alderman v. Share*, 7 Wend., 220.)

In cases commenced by attachment, and where no personal service has been made on the defendant, or he has not appeared in the action, the execution can be enforced only against such property as was seized under the attachment. (3 R. S., 464; Laws of 1831, chap. 300, § 39.)

The constable should not levy upon more goods than will be sufficient to satisfy the execution, though if he take but a few more than sufficient for that amount he will not render himself liable, but if he take an unreasonable amount, or if he select such articles to annoy the defendant or unnecessarily inconvenience him he would be liable to an action for damages. (*Dezell v. Odell*, 3 Hill, 215; *Platt v. Sherry*, 7 Wend., 236.)

The levying upon sufficient personal property does not of itself satisfy the judgment; and he may levy upon additional property at another time and sell it without making himself liable as a trespasser. (*Denvrey v. Fox*, 22 Barb., 522), or if he has levied upon property supposing it to be the property of the defendant, and a third party claims the property and recovers the proceeds of sale, another execution may issue or other

property may be levied on and sold. (*Richardson v. McDougal*, 19 Wend., 80; *Piper v. Elwood*, 4 Denio, 165.) So, too, if the defendant does anything to defeat the effect of the levy and sale. (*Newland v. Baker*, 21 Wend., 264.)

At the time and place appointed for the sale, if the goods and chattels be present, and pointed out to the inspection and examination of the bidders, the constable shall expose them to sale at vendue, to the highest bidder (3 R. S., 448 [252]), and shall offer them for sale in such lots and parcels as shall be calculated to bring the highest prices. (3 R. S., 648 [367.]) The goods should be pointed out specifically and sold separately (*Sheldon v. Soper*, 14 Johns., 353), if not so presented no property in them will pass to the purchaser (*Cresson v. Stout*, 17 Johns., 116); and where a part of the property is present and part absent from the sale, the sale is valid only as to the property present. (*Linnendoll v. Doe et al.*, 14 Johns., 222.)

The constable should sell only so much property as will satisfy the execution, and which can conveniently be sold separately; and the constable's authority over the property ceases, on the execution being returned satisfied, so that he cannot then remedy any defect in the first sale, by reselling, assigning, or deeding the property over again. (*Jackson et al. v. Smith*, 1 Johns. Ca., 284.)

If the constable have several executions against the same defendant he should sell and satisfy the executions in the order in which they were received by him, for if he sell the whole on a junior execution, the sale will be valid, and pass a good title to the purchaser, but the

constable will make himself liable to the plaintiff on the execution which was first given him to enforce. (*Sandford v. Roosa*, 12 Johns., 162.)

The constable may adjourn the sale to a different time and place, even after it has commenced, and the completion of the sale at a different time and place, will be valid, if there be no fraud or abuse. (*Tinkom v. Purdy*, 5 Johns., 346.) But if he ask or receive any thing for postponing the sale of any property under execution, he shall be deemed guilty of a misdemeanor. (3 R. S., 454 [267.] )

No constable or other officer shall, directly or indirectly, purchase any goods or chattels at any sale made by him, upon execution; but every such purchase shall be absolutely void. (3 R. S., 448 [252.] )

On sale by the constable, the same rules prevail as govern in other auction sales. The bargain is not struck till the article is knocked down, until which, the bid being a mere proposition, may be withdrawn. But when the article is knocked down, if the bidder do not receive it and pay the money, the article may be sold again, and the bidder is liable to pay the constable the loss upon the second sale; or the constable may prosecute an action against the purchaser for goods bargained and sold. Where on a sale of goods, a single accepted bid amounts to fifty dollars or more (which is very seldom the case) it is perhaps necessary that the requisitions of the statute of frauds should be complied with, by a note or memorandum in writing, earnest, or part delivery. Indeed, there is great propriety in the constable's executing and delivering to the purchaser a memorandum of

sale whatever the amount of his bid may be. (2 Cow. Tr., 1077, 2d ed.)

For want of goods and chattels whereon to levy, the constable shall, in the cases authorized by law, if the execution require it, take the body of the person against whom the execution shall have issued, and convey him to the common jail of the city or county, the keeper whereof is hereby required to keep such person in safe custody, in jail, until the debt or damages and costs shall be paid, or he be thence discharged by due course of law. (3 R. S., 448 [252.])

It is the duty of the constable to search for property, in all cases, before taking the body; and if he take the body immediately when the defendant has property in his open and visible possession, subject to execution, and which might have been found with reasonable diligence, the constable is a trespasser. But he has a reasonable time to make search for the property, and is not answerable for omitting to arrest the defendant until such search can be made; and he is justified in making an immediate arrest if the defendant tells him he has no property. (*Hollister v. Johnson*, 4 Wend., 639.)

As a general rule, the constable is not liable for false imprisonment, for arresting the defendant, unless the defendant shows affirmatively, that he had property clearly subject to execution, and that he disclosed the fact to the constable, who refused to seize it. (*Barhydt v. Valk*, 12 Wend., 145.)

No female shall be arrested or imprisoned upon any execution issued from a justices' court. (3 R. S., 449 [253.])

The following property, when owned by any person

being a householder, shall be exempt from levy and sale, under any execution, and such articles thereof as are movable, shall continue so exempt, while the family of such person, or any of them, may be removing from one place of residence to another :

1. All spinning-wheels, weaving looms and stoves, put up or kept for use in any dwelling house.

2. The family Bible, family pictures and school books, used by or in the family of such person ; and books not exceeding in value fifty dollars, which are kept and used as part of the family library.

3. A seat or pew occupied by such person or his family, in any house or place of public worship.

4. All sheep, to the number of ten, with their fleeces, and the yarn or cloth manufactured from the same ; one cow, two swine, the necessary food for them ; all necessary pork, beef, fish, flour and vegetables, actually provided for family use : and necessary fuel for the use of the family for sixty days.

5. All necessary wearing apparel, beds, bedsteads and bedding, for such person and his family ; arms and accoutrement, required by law to be kept by such person ; necessary cooking utensils ; one table ; six chairs ; six knives and forks ; six plates ; six teacups and saucers ; one sugar dish ; one milk pot ; one tea pot and six spoons ; one crane and its appendages, one pair of and-irons and a shovel and tongs.

6. The tools and implements of any mechanic, necessary to the carrying on of his trade, not exceeding twenty-five dollars in value. (3 R. S., 645, 646, [367] ; Laws of 1842, ch. 157 ; Laws of 1858, ch. 107 ; Laws of 1860, ch. 152.)

In addition to the articles above-mentioned as exempt by law from levy and sale under execution, there shall be exempted from such sale necessary household furniture, and working tools and team, owned by any person being a householder, or having a family for which he provides, to the value of not exceeding two hundred and fifty dollars, and in addition thereto, there shall also be exempted from such levy and sale, the necessary food for said team for a period not exceeding ninety days; provided that such exemption shall not extend to any execution issued on demand for the purchase money of such furniture, or tools, or team, or the food for said team, or the articles now enumerated by law. (Laws of 1859, chap. 134, p. 343.)

And by a law passed April 3, 1860 (chap. 152, p. 245), one sewing machine, with the appurtenances thereunto belonging is also exempt.

The fleeces, or the yarn or cloth manufactured from the fleeces of ten sheep, are exempted from execution while in the hands of a householder, whether he be or be not the owner of sheep (*Hall v. Penney*, 11 Wend., 44); so, too, of yarn not made into cloth. (*Bracket v. Watkins*, 21 Wend., 68.) It is not necessary that the potatoes should be dug and housed to exempt them from execution. (*Carpenter v. Herrington*, 25 Wend., 370.)

The cow of the householder is exempt from levy and sale, though the head of the family has left the state, if he leaves his family living together, and if at the time the family is moving from one house to another, and the wife of the householder consent that the constable may make the levy. (*Woodward v. Murray*, 18 Johns., 400.)

In ordinary cases a wagon is not exempt by name from levy and sale, although under certain circumstances it may be included, as exempt, as in "working tools" (*Morse agt. Keyes*, 6 How., 18); but if it is a one horse wagon belonging to a practising physician it is exempt (*Eastman agt. Casswell*, 8 How., 75); so, too, his horse where he is a country physician, and his patients reside at too great a distance to visit them on foot. (*Wheeler agt. Cropsey*, 5 How., 288.)

The professional books necessary, to a professional man, who supports a family, for the practice of his profession, are exempt from execution, and also a reasonable amount of miscellaneous matter, as well for his use as for the use of the family. The surgical instruments of a physician are exempt as his tools. (*Robinson's case*, 3 Abb., 466.)

It has been held that a team may be two or more horses or oxen harnessed together; the harness may therefore be regarded as exempt; but a wagon, a cart or sleigh cannot be regarded as a part of a team (*Morse agt. Keyes*, 6 How., 21): and also that a wagon is not exempt, at law, as such, from levy and sale on execution. But when customarily used in connection with a horse or horses, and harness, it may constitute a part of a team, and will come within the meaning of the word team as used in the statutes of exemption, and not be liable to be sold on execution. (*Dains v. Prosser*, 32 Barb., 290.)

A single horse used by a debtor with a hired horse to make a team will be exempt. (*Lockwood v. Younglove*, 27 Barb., 505.)

Although a debtor has necessary household furniture

and working tools, in addition to his team, worth \$150, or property of each separate description worth \$150, it does not follow that the creditor can take the whole. It is in such a case, the right of the debtor to determine out of which description of property he claims the exemption. (Id.)

The party claiming an exemption for his cooking utensils, must show affirmatively and certainly that the cooking utensils taken in execution were in fact necessary, and not merely that they might be useful in cooking. (*Van Sickler v. Jacobs*, 14 Johns., 434.) And the question whether a given article was necessary is one of fact and not of law, and where the jury found that a clock owned by a householder was not exempt held that the verdict could not be disturbed on certiorari. (*Willson v. Ellis*, 1 Denio, 462.)

Where a party claims the exemption of a wagon, as being a part of a team, he is bound to show, affirmatively, that the team is worth as a whole, less than \$250, or does not exceed that sum. If there is no proof to show what the value of the team was, as an entirety, or what was the value of the several parts, or of any part thereof, except the wagon the exemption cannot be allowed. (*Dains v. Prosser*, 32 Barb., 290.)

It has been provided that the exemption mentioned, in addition to the specified articles, shall not apply to any judgment rendered for a claim accruing for work and labor performed in a family as a domestic. (3 R. S., 646; Laws of 1858, chap. 107.)

Where the judgment is for the purchase money of certain articles made exempt from levy and sale on execution, the execution on such judgment must be

enforced against the particular articles for the purchase of which the judgment was obtained, and not against other property exempt by statute. (*Cole v. Stevens*, 9 Barb., 676 ; *S. C.*, 6 How., 424.)

The exemption of certain property from execution, by the statute is a personal privilege of which the owner alone can take advantage. His bailee or agent cannot maintain an action on this ground, for property taken in execution against the owner. (*Mickles v. Tousley*, 1 Cow., 114 ; *Earl v. Camp*, 16 Wend., 562.)

The constable shall return the execution and pay the debt or damages and costs levied, to the justice who issued the same, returning the overplus, if any, to the person against whom the execution issued. (3 R. S., 448 [252.] )

If a constable neglect to return an execution within five days after the return day thereof, the party in whose favor the same was issued may maintain an action of debt against such constable, and shall recover therein the amount of the execution, with interest from the time of the rendition of the judgment upon which the same was issued. But a constable shall not be liable for not serving and returning an execution, upon which the defendant's exemption shall have been indorsed, if he duly collect and return the money payable by installments, or return the execution as to person and property not found. (3 R. S., 449, 450 [253.] )

The constable should always endeavor to levy and sell, or to arrest and imprison within the lifetime of the execution, or the revival thereof, because he will not be protected for any act done by him under the execution, after the time limited therein for its return, or after

the time or times for which the same may have been renewed. (3 R. S., 450 [253.])

If moneys be collected by a constable upon an execution, and not paid over by him according to law, an action of assumpsit may be maintained by the party entitled to such money, in his own name, upon the instrument of security given by such constable and his sureties, pursuant to the provisions of the second article, of the third title, of the eleventh chapter of the Revised Statutes; and in such suit, the amount so collected, with interest from the time of collection, shall be recovered. (Id.)

In an action against an officer for neglecting to return an execution, *prima facie*, the measure of damages is the amount required by the execution. And it is not necessary for the plaintiff to allege or prove special damages. The officer may show in mitigation of damages, that the defendant in the execution had no property upon which he could have levied, but not that the judgment is still collectible. (*Ledyard v. Jones*, 3 Sel., 550.)

An action of debt lies not only against the constable, but also against the sureties for the mere neglect to return an execution: and it is not necessary to show moneys collected by him, to sustain the action (*Sloan et al. v. Case*, 10 Wend., 370): the sureties are liable equally with the constable.

The constable should pay over the surplus moneys as soon as he is able to ascertain the amount of the same, although he has until the return day to do so. And an action against a constable for the recovery of overplus moneys collected by him on execution, cannot be sustained, where the action is brought before the return

day of the execution, and where no demand of such moneys has been made. The action is premature. (*Bortel* agt. *Ostrander*, 15 How., 572.)

The return of the constable must be signed by him, and for a failure he will be liable to an action at the suit of any party aggrieved. (3 R. S., 739 [440.] )

Though the constable has until the return day to serve an execution against the body, yet if he arrest him within the time for the return, it will be an escape to suffer him to go at large, which will not be excused by his having the defendant in custody on the return day. (*Pulver v. McIntyre*, 13 Johns., 503.) But if the constable has duly arrested the defendant and he escapes without the knowledge or consent of the officer, he may retake the defendant even after the time for the return of the execution.

Where two judgments, one larger and one smaller, were docketed at the same time, against the same defendant, in favor of different plaintiffs; executions were simultaneously issued, delivered and levied on personal property which was sold under both, and purchased by each plaintiff, at bids differing in amount; held, that the moneys were to be equally divided between the two executions, till the smaller one was satisfied; the residue to be applied on the larger. (*Campbell v. Ruger*, 1 Cow., 215.)

The constable is not required to keep the execution in his hands sixty days. The return cannot be sooner compelled, but if he is satisfied that there is no property, he may return it at his own risk at any time. (*Morange v. Edwards*, 1 E. D. Smith, 414.)

Where a constable has returned the execution satis-

fied by a sale of property, and the property is afterwards recovered in an action by the defendant, he cannot revive the judgment by a supplemental return of the fact. (*Ross v. Hicks*, 11 Barb., 481.)

If either party appeals from the decision of the justice, and desires a stay of execution, he must give a proper undertaking, and the delivery of the undertaking to the court below shall stay the issuing of execution, or, if it have been issued, the service of a copy of the undertaking, certified by the court below, upon the officer holding the execution, shall stay further proceedings thereon. (Code, § 357.)

On appeal from a judgment of the marine or district courts in the city of New York, if an execution has been issued from such courts, and the officer has levied upon the defendant's goods, the giving of an undertaking on appeal, as required by section 357 of the Code, and the service of a certified copy on the officer, arrest the proceedings as they are at that time; but the levy is not thereby discharged, nor can the appellant require that the goods levied upon be returned to him before a final disposition of the appeal. (*Smith v. Allen*, 2 E. D. Smith, 259.)

Where the undertaking was insufficient to stay the appeal the defendant will be allowed further time to execute and file a further undertaking. (*Sternhaus agt. Schmidt*, 5 Abb., 66.)

## CHAPTER IV.

OF THE POWER AND DUTIES OF A CONSTABLE IN THE  
EXECUTION OF PROCESS IN VARIOUS PROCEEDINGS  
COGNIZABLE BY A JUSTICE OF THE PEACE.

*1. In landlord and tenant proceedings to recover possession of demised premises.*

Any tenant or lessee at will, or at sufferance, or for any part of a year, or for one or more years, of any houses, land or tenements, and the assigns, under tenants, or legal representatives of such tenant or lessee, may be removed from such premises, by any judge of the county courts of the county, or by any justice of the peace of the city or town where the premises are situated, or by any mayor or recorder of the city where such premises are situated, or in the city of New York, by the mayor, recorder, any justice of the marine court, or any one of the justices of the district courts of the city of New York, in the following cases :

1. Where such person shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.

2. Where such person shall hold over without such permission as aforesaid, after any default in the payment of rent, pursuant to the agreement under which such premises are held, and a demand of such rent shall have

been made, or three days' notice in writing requiring the payment of such rent, or the possession of the premises, shall have been served by the person entitled to such rent, on the person owing the same, in the manner hereafter described for the service of the summons, to recover possession.

3. Where the tenant or lessee of a term of three years, or less, shall have taken the benefit of any insolvent act, or been discharged under any act for the relief of his person from imprisonment during such term.

4. Where any person shall hold over and continue in possession of any real estate which shall have been sold by virtue of an execution against such person, after a title under such sale shall have been perfected.

The landlord or lessor, his legal representatives, agents, or assigns may make proof of the facts in writing by affidavit and present them to the proper officer who, on receiving such affidavit, shall issue his summons, describing the premises of which the possession is claimed, and requiring any person in the possession of said premises, or claiming the possession thereof, forthwith to remove from the same or show cause before the said magistrate, within such time as shall appear reasonable, not less than three nor more than five days, why possession of said premises should not be delivered to such applicant, provided, however, that in the cases where a person continues in possession of the demised premises, after the expiration of his term, without permission of his landlord, the magistrate may direct such summons to be made returnable on the same day.

This summons may be served by a constable, and served as follows :

1. By delivering to the tenant to whom it shall be directed, a true copy thereof, and at the same time showing him the original; or

2. If such tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place, with some person of mature age residing on the premises, or if there be no such person residing thereon, then such service may be made by affixing such copy upon a conspicuous part of the said demised premises. (3 R. S., 836, 837 [513, 514.] )

The summons should be directed to the tenant by name, for if the direction is left blank it will be defective (*Duel v. Rust*, 24 Barb., 438), even though it should be served on the proper party. (*Cunningham v. Goelet*, 4 Denio, 71.)

Having made such service the constable should return the summons, with his proof of the service indorsed thereon, to the magistrate who issued the same.

Proof of the manner of service should be by affidavit; and if the tenant is absent, the affidavit of service must state that he was absent from his last or usual place of residence, and that the copy was left with a person of mature age. (*Cameron v. McDonald*, 1 Hill, 512.)

If at the time appointed no sufficient cause be shown to the contrary, and due proof of the service of such summons be made to the magistrate, he issues his warrant to the officer commanding him to remove all persons from the said premises, and to put the said applicant to such magistrate, into the full possession thereof.

But if on the return day of the summons, the person claiming possession of the demised premises file an affi-

davit, with the magistrate, denying the facts or any of the facts upon which the summons issued, the matter thus controverted is to be tried by the magistrate, or jury. Either party may demand a jury, and at the time of the demand must pay to such magistrate the necessary costs and expenses of obtaining such jury.

In order to form such jury, the magistrate nominates twelve reputable persons qualified to serve as jurors in courts of record, and issues his precept to the sheriff, constable or marshal to summon the persons so nominated, to appear before such magistrate at such time and place as he shall therein appoint, not more than three days from the date thereof, for the purpose of trying the said matters in difference.

And the constable should see that no more than twelve are named in the precept and summoned, as the summoning a larger number would be error. (*Farrington v. Morgan*, 20 Wend., 207.)

The jury are to be summoned, by personal service, which should be made on each of them at least twenty-four hours before the return of the precept, and when the constable should return the original precept, with the time and manner of the service thereon indorsed.

Six persons from those summoned are to be drawn in like manner as jurors are drawn in justices' courts, and sworn well and truly to hear, try and determine the matters in difference between the parties.

After hearing the allegations and proof of the parties, the jury are to be kept together until they agree on their verdict, by the sheriff or one of his deputies, or a constable, or by some proper person appointed by the magistrate for that purpose, who shall be sworn to keep

such jury as is usual in like cases of courts of record, or in cases in the justices' courts.

If the decision of the magistrate or the jury is in favor of the person claiming the possession, the magistrate shall issue his warrant to the sheriff, or to any constable of the county in which the premises are situated, commanding such officer to put such landlord, lessor or other person into possession. (3 R. S., 837, 838 [514, 515]; Laws of 1857, ch. 684; 1868 ch. 828.)

After the litigation has terminated and the officer has received the warrant authorizing him to put the person claiming the possession of the premises into possession, he should at once proceed to execute the same, according to the tenor thereof; and in doing this, if necessary, he may call the power of the county to his aid, the same as when called to enforce any other precept from a court or magistrate.

Should it become necessary, the constable may subpoena witnesses in the foregoing proceedings in the same manner, and make return of such service in the same manner as in actions in the justices' courts.

## 2. *As to idle and truant children.*

It is made the duty of all constables as well as of all police officers, if they find any child between the ages of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, wandering in the streets or lanes of any city or incorporated village, idle and truant, without any lawful occupation, to bring such child before any justice, police magistrates, or justices of the district courts in the city of New York, for examination, and also to cause the parent, guardian or

master of such child, if he or she have any to be notified, to attend such examination; and to make complaint to such justice of the peace, police magistrate or justice of the district court, to the end, to require the parent, guardian or master to enter into an engagement, in writing, to the corporate authorities of the city or village, that he will restrain such child from so wandering about, will keep him or her on his own premises or in some lawful occupation, and will cause such child to be sent to some school at least four months in each year, until he or she becomes fourteen years old. In case such child has no parent, guardian or master, or none can be found; or if such parent, guardian or master refuse or neglect, within a reasonable time, to enter into such engagement, or to give security, if required by such magistrate, for the faithful performance of such engagement, such justice shall, by warrant under his hand, commit such child to such place as shall be provided for his or her reception, by the corporate authorities of every city and incorporated village. (2 R. S., 378, 379; Laws of 1853, ch. 185.)

### 3. *Under the highway law.*

Any person feeling himself aggrieved, or any commissioner or commissioners feeling dissatisfied by any assessment of damages for laying out, altering or discontinuing any highway, may, within twenty days after filing the assessment, signify the same by notice in writing, and serving the same on the town clerk and on the opposite party, asking for a jury to reassess the damages, and specifying a time not less than ten nor more than twenty days from the time of filing said assessment,

when such jury will be drawn at the clerk's office of an adjoining town of the same county by the town clerk thereof. The town clerk is to draw the names of twelve persons from a box containing a list of the persons selected according to law to serve as jurors in courts of record. The town clerk is to give a certificate containing the names of the twelve persons so selected to the party first asking for the reassessment; and the party receiving such certificate, shall, within twenty-four hours thereafter, deliver the same to a justice of the peace of the town wherein the damages are to be assessed; and it shall be the duty of the justice forthwith to issue a summons to one of the constables of his town, directing him to summon the persons named in said certificate specifying in said summons a time and place of meeting. And the constable, on the receipt of said summons, is forthwith to personally serve said summons on each of the persons named for jurors therein. (2 R. S., 397, 398; Laws of 1847, ch. 455.)

Whenever a highway has been encroached upon by fences erected by any occupant of the land, the commissioners of highways of the town, may, by an order in writing, direct such fence to be removed. If the occupant within five days deny such encroachment, the commissioners or some one of them, shall apply to any justice of the peace of the county for a precept, directed to any constable of the town, to summons twelve freeholders thereof, to meet at a certain day and place to be specified in such precept, and not less than four days after the issuing thereof to inquire into the premises.

The constable, on the receipt of the precept, is to summon twelve freeholders as in the said precept directed,

and also give at least three days' notice to the commissioners of highways of the town, and to the occupant of the land, of the time and place at which such freeholders are to meet. The summons should be served and returned in the same manner as a venire in the justices' court. The constable should be very particular in summoning the jury to see that each of them has the requisite qualification, although the justice who swears them has authority to pass upon or adjudge as to their qualifications. (Laws of 1862, chap. 243.) The notice to be served on the commissioners should be in writing, in order that it may be attached to the papers as part of the proceedings.

On the trial, if the jury find that an encroachment has been made, they make and subscribe a certificate in writing stating the particulars of such encroachment, and by whom made, which shall be filed with the town clerk. The occupant shall remove his fences within sixty days after the filing of such certificate (except that no person shall be required to remove any fence under the above mentioned proceedings, except between the first day of April and the first day of November in any year), or he forfeits fifty cents per day for every day the fence remains unmoved after the sixty days shall have expired.

If the occupant does not remove his fence within the sixty days after he receives the notice of the commissioners in those cases; when he does not appear to contest the fact of encroachment, or within sixty days after filing the certificate of the finding of the jury, the commissioners may cause it to be removed; and a justice of the peace may issue his warrant to any constable under his hand and seal, to collect the costs of such removal, from

the occupant found encroaching as aforesaid. Or if the occupant does not, within ten days after the filing of the certificate of the jury finding an encroachment, pay the costs of such inquiry the justice shall issue a warrant under his hand and seal to any constable to collect the same. (2 R. S., 407, 408 [522.])

It is the duty of every overseer of highways, within six days after any person who has been assessed to work highways, and has failed to do so, and failed to render any excuse for such failure to labor, and incurred a fine or penalty for such neglect, to make complaint on oath to one of the justices of the peace of the town, against such delinquent.

The justice, to whom such complaint shall be made, shall forthwith issue a summons directed to any constable of the town, requiring him to summons such delinquent to appear forthwith before such justice, at some place to be specified in the summons, to show cause why he should not be fined according to law for such refusal or neglect; which summons shall be served (by such constable) personally or by leaving a copy at his personal abode.

If upon the return of such summons no sufficient cause shall be shown to the contrary, the justice shall impose such fine as is provided by the statute for the offense complained of, and shall forthwith issue a warrant under his hand and seal, directed to any constable of the town where such delinquent shall reside, commanding him to levy such fine, with the costs of the proceedings, of the goods and chattels of such delinquent.

The constable, to whom such warrant shall be directed, shall forthwith collect the moneys therein mentioned.

He shall pay the fine when collected to the justice who issued the warrant, who is required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer. (2 R. S., 391 [511.] )

#### 4. *Beggars and vagrants.*

It shall be the duty of every constable or other peace officer, whenever required by any person to carry such vagrants (as are hereinafter described) before a justice of the peace of the same town, or before the mayor, recorder, or any one of the aldermen of the city in which such vagrant shall be, for the purpose of examination, in order that if it appears that such persons are vagrants that they may be sent to the poor house, or the house of correction or to prison. The persons referred to as vagrants are described as follows: All idle persons who, not having visible means to maintain themselves, live without employment; all persons wandering abroad and lodging in taverns, groceries, beer houses, out-houses, market places, sheds or barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, highways, passages or other public places to beg or to receive alms, shall be deemed vagrants. (2 R. S., 879 [633.] )

Should the complaint be made to the magistrate and he issue his warrant to bring up such vagrant for examination, the warrant should be directed to a constable of the county where the pauper resides; but it cannot be executed by a constable of any other town than that

where the pauper resides. (*Reynolds v. Orvis*, 7 Cow., 269.)

### 5. *Disguised persons.*

Every person who having his face painted, discolored, covered or concealed, or being otherwise disguised in a manner calculated to prevent him from being identified, shall appear in any public road or highway, or in any field, lot, woods or inclosure, may be pursued and arrested and brought before a magistrate of the same county where he shall be arrested, and not giving a good account of himself shall be deemed a vagrant, and, on conviction, shall be committed to and imprisoned in the county jail, of the county where such person shall be found, not exceeding six months. Every sheriff, deputy sheriff, constable, marshal of a city or other public peace officer, or other citizen of the county where such person or persons shall be found disguised as aforesaid, may, of his own authority and without process, arrest, secure and convey to a magistrate residing in the county where such arrest shall be made, any person who shall be found having his face painted, discolored, covered or concealed, or being otherwise disguised as aforesaid, to be examined and proceeded against according to law ; and it shall be the duty of any sheriff, deputy sheriff, constable, marshal or other peace officer, whenever any of them shall discover any person with his face so painted, discolored, covered or concealed, or being otherwise disguised as aforesaid, immediately to arrest, secure and convey such person before a magistrate to be proceeded with according to law ; and whenever any such officer shall receive credible information of any person having

his face so painted, discolored, covered or concealed, or being otherwise disguised as aforesaid, it shall be the duty of every such officer forthwith to pursue such person and arrest, secure and convey him to a magistrate.

On the execution of the duties prescribed above, any sheriff, deputy sheriff, constable, marshal or other peace officer, shall be authorized to command any male inhabitant of his county, or as many as he shall think proper to assist him, in seizing, arresting, confining and conveying to any magistrate, and committing to the common jail of the county, every person with his face so painted, discolored, covered or concealed, or being otherwise disguised as aforesaid; and any inhabitant so commanded may provide himself or be provided with such means and weapons as the officer giving such command shall designate. (2 R. S., 880, 881; Laws of 1845, chap. 3.)

#### 6. *Hawkers and Peddlers.*

Persons are not authorized to travel from place to place within this state, for the purpose of carrying to sell or exposing to sale any goods, wares or merchandise, of the growth, produce or manufacture of any foreign country, unless he shall have obtained a license as a hawker and peddler from the secretary of state for this state. The license may be issued at any time, for any term not less than six months, nor more than one year: and every license granted may be renewed on the expiration of the same.

Every person found traveling and trading within this state, contrary to the provisions of the statute, or contrary to the terms of this license shall, for each offense,

forfeit the sum of twenty-five dollars to the use of the poor of the town in which the offense shall be committed. And every person so trading, who shall refuse to produce a license as a hawker or peddler to any officer or citizen who shall demand the same shall, for each offense, forfeit the sum of ten dollars for the use of the poor of the town in which the demand shall be made, and every such offender who, after notice, shall refuse or neglect to pay the above penalty, shall be committed by the justice, before whom the conviction shall be had, to the jail of the county in which the offence shall have been committed for the term of one month.

Any citizen may apprehend and detain any person who shall be found trading as a hawker or peddler, without license, or contrary to the terms of his license, or who shall refuse to produce a license, in violation of the provisions of the statute; and may convey the offender before any justice of the peace of the town or county in which he shall be apprehended.

It is the duty of such justice, if a sufficient license to authorize such trading be not produced to him, and the fact of violation be proved or confessed, to convict the offender of any offense against the statute, as is so proved or confessed; and to issue his warrant on such conviction, directed to some constable of the county in which the conviction shall be had, commanding such constable to cause the sum of twenty-five dollars, with costs not to exceed five dollars, to be forthwith levied by distress and sale at public vendue of the goods, wares and merchandise of the offender. The moneys collected on such warrant, exclusive of the cost, shall be paid by the constable to the justice, and by the justice to the over-

seer of the poor of the town in which the offense shall have been committed. All suits or prosecutions for the recovery of any penalty, referred to above, must be brought within sixty days after the commission of the offenses charged. (2 R. S., 472-474 [575-577.] )

### 7. *Bastardy Cases.*

It is the duty of the superintendents and overseers of the poor of the county, or any of them, to take the necessary steps to ascertain the father of any bastards born, or likely to be born, and for that purpose to apply to some justice of the peace of the same county to make inquiry into the fact and circumstances of the case.

Such justice shall by examination of such woman on oath, and upon such other testimony as may be offered, ascertain the father of such bastard, or of such child likely to be born a bastard; and shall thereupon issue his warrant directed to any constable of the county, commanding him forthwith to apprehend such reputed father and bring him before such justice, for the purpose of having an adjudication respecting the filiation of such bastard, or of such child likely to be born a bastard.

If the person charged as such reputed father, shall be or reside in any other county of the state than that in which such warrant issued, the justice issuing the same shall in writing thereon direct the sum in which any bond shall be taken of the person so charged; and it shall be the duty of the constable, or other proper officer having the same, to carry it to some justice of the city or county wherein such person resides or can be found. The justice to whom the same shall be presented,

on proof being made to him of the handwriting of the justice who issued such warrant, shall indorse his name thereon, with an authority to arrest such person in the county where the justice so indorsing shall reside; which shall be a sufficient authority to the person bringing such warrant, and to all others to whom it was originally directed, to execute the same in the county where it was indorsed.

Upon the person so charged being apprehended, he shall be carried before the justice who indorsed the said warrant or some other justice of the same county, who may take from such person a bond to the people of this state with good and sufficient sureties in the sum so directed on the said warrant, with condition to indemnify the county, and town or city where the said bastard shall have been born, or where the woman likely to have such bastard shall be, and every other county, town or city which may have incurred any expense, or may be put to any expense, for the support of such child, or of its mother during her confinement and recovery therefrom, against all such expenses and to pay the costs of apprehending such father, and of any order of filiation that may be made; or such justice may take from the person so charged and apprehended a bond as aforesaid, in the sum directed on the said warrant, with good and sufficient sureties, conditioned that such person will appear at the next court of sessions to be holden in the county where such warrant was originally issued, and not depart the said court without its leave.

Upon a bond being so entered into, with either of the conditions aforesaid, the justice taking the same shall

discharge the person so apprehended from the arrest, and shall indorse upon the warrant a certificate to that effect. He shall deliver the warrant with the bond so taken by him to the constable who brought such warrant, who shall deliver the same to the justice who granted the same, who shall proceed thereupon in the same manner as if such bond had been taken by him.

If the person so charged and apprehended shall not execute the bond so required, with one or other of the conditions aforesaid, to the satisfaction of the justice before whom he shall be brought, then the constable or other proper officer having such warrant, shall take the person so apprehended before the justice who originally issued such warrant.

When the person so charged being brought before the justice who issued the warrant for his apprehension, the justice shall immediately call to his aid any other justice of the same county, and the two justices are to proceed and examine into the matter; if not prepared to proceed, or the person charged shall require delay, they may adjourn the examination for any time not exceeding six weeks.

During such examination, and until such person shall be discharged by the justices aforesaid, he shall remain in the custody of the constable who apprehended him, unless a bond shall have been taken for his appearance; and when committed to any jail, he shall be confined therein without being entitled to the liberties thereof.

Every constable or other officer, to whom any bond of the putative father of a bastard, or of a child likely to be born a bastard, taken out of the county where the warrant was issued, shall be delivered to the justice as

hereinbefore specified who shall neglect or refuse to deliver the same to the justice who issued such warrant within fifteen days after the receipt of the same, shall forfeit the sum of twenty-five dollars, to be sued for and recovered by and in the name of any overseer of the poor, or county superintendents, at whose instance the said warrant was issued.

When the mother refuses to disclose the name of the father of the bastard child, the justice or justices, by warrant under his or their hands directed to any constable or sheriff of the county, may commit her to the common jail of the county, there to remain until she shall testify and disclose the name of such father. (2 R. S., 906-920 [642-656.] )

The warrant, for the arrest of the putative father, continues in force until it is fully executed; and if the party escapes, he may be again arrested. The proceedings are quasi criminal in their character, but it is not conceived that the officer holding the warrant acts as upon process for the arrest of the defendant in a civil action. The warrant may be executed in any part of the county, and in the day or night, but not upon Sunday; and the door of the defendant's dwelling-house cannot be broken open to arrest him in the first instance. But it is otherwise if, after due arrest, he shall have escaped. (Crock, &c., § 1051.)

The constable should see that the name of the person to be arrested is correct in the warrant, as he would be liable to an action of false imprisonment if there is a misnomer in the warrant. (*Scott v. Ely and White*, 4 Wend., 555.)

8. *As to disturbers of religious meetings.*

It is the duty of all sheriffs and their deputies, coroners, marshals, constables and other peace officers, who may be present at the meeting of any assembly for religious worship, to apprehend and take before some justice of the peace or other magistrate, any person who shall willfully disturb, interrupt or disquiet any assemblage of people met for religious worship, by profane discourse, by rude and indecent behavior, or by making a noise either within the place of worship or so near it, as to disturb the order and solemnity of the meeting. And the person so creating the disturbance may be tried and summarily convicted before any justice of the peace of the county, or any mayor, recorder or other magistrate of a city, and upon such conviction shall forfeit a sum not exceeding twenty-five dollars, for the benefit of the poor of the county.

All judges, mayors, recorders, and justices of the peace, within their respective jurisdictions, upon their own view of any person creating such disturbance, may order the offender into the custody of any officer above named, or of any official member of the church or society so assembled and disturbed, for safe keeping, until he shall be let to bail, or a trial for such offense be had. If any person convicted of disturbing an assemblage for public worship, shall not immediately pay the penalty incurred, with costs of the conviction, or give security to the satisfaction of the officer, before whom the conviction shall be had, for the payment of the said penalty and costs within twenty days thereafter, he shall be committed by warrant to the common jail of the county until the same

be paid, or for such term not exceeding thirty days, as shall be specified in the warrant.

The person complained of as above specified, may, before the court shall proceed to investigate the merits of the cause, demand of such court that he may be tried by a jury. Upon such demand it shall be the duty of such court to issue a venire to any constable of the county or marshal of the city, where the offense is to be tried, commanding such officer to summon the same number of jurors, and in the same manner as is provided for the summoning of jurors for special sessions. The said court shall proceed to impanel a jury for the trial of said cause, in the same manner, and shall be subject to all the rules and regulations prescribed in the act providing for trials by jury in courts of special sessions. (2 R. S., 934, 935 [674, 675.] )

9. *As to excise.*

It is the duty of every sheriff, under sheriff, deputy sheriff, constable, marshal, policeman, or officer of police, to arrest all persons found actually engaged in selling any strong and spirituous liquors, or wines in quantities less than five gallons at a time, without having a license therefor, or who shall sell any strong or spirituous liquors or wines to be drank in his house or shop, or any out-house, yard or garden appertaining thereto, or shall suffer or permit any such liquors or wines sold by him or under his direction or authority to be drank in his house or shop, or in any out-house, yard or garden thereto belonging, without having obtained a license therefor, and forthwith to carry such person before any magis-

trate of the same city or town, to be dealt with according to the provisions of the excise law.

And it is also the duty of the constable and other officers above named, whenever he shall find any person intoxicated in any public place, to apprehend such person and take him before some magistrate of the same city or town; and if such magistrate shall, after due examination, deem him too much intoxicated to be examined, or to answer on oath correctly, he shall direct said officer to keep him in some jail, lockup or other safe and convenient place, until he shall become sober, and thereupon forthwith bring him before said magistrate: if found guilty of being intoxicated he is to be fined ten dollars, and costs at the same rate as in special sessions, and imprisonment in the county jail, workhouse or penitentiary until paid, not, however, to exceed ten days.

The person found guilty of selling liquor without a license, contrary to the provisions of the excise law, forfeits fifty dollars for each offense, and, on conviction, unless the fine is paid, the offender is to be committed to the county jail until such judgment is paid, or until he be discharged according to law. (2 R. S., 938-948; Laws of 1857, ch. 628; Laws of 1860, and 1869.)

#### 10. *Habitual drunkards.*

Whenever the overseers of the poor of any city or town shall discover any person to be an habitual drunkard, they may by writing under their hands, designate and describe such drunkard, and forbid every person residing within or near the city or town, from giving or selling, under any pretense, any spirituous liquors to such drunkard. And any person so designated as an habitual drunkard, may apply to any justice of the peace of

the city or town, in which the person so designated resides, for process to summon a jury to try and determine such fact of drunkenness.

On such application, the justice shall immediately give notice thereof in writing, to the overseers of the poor, specifying the time and place where the parties shall meet for the trial of such fact, and shall issue a venire to any constable to summon a jury of twelve persons, competent to serve on juries, to appear at the said time and place for the purpose of trying the said fact.

Such jury shall be summoned, returned, and six of them shall be ballotted for by such justice, and shall be sworn well and truly to try the fact of the alleged drunkenness, in the same manner as for the trial of issues in suit brought before a justice of the peace, and witnesses shall be summoned, and their attendance and testimony enforced, and they shall be sworn and examined before the said jury in like manner. (2 R. S., 901 [637].)

#### 11. *As to pawned property.*

Whenever any person shall make oath before any justice of the peace, police justice or assistant justice, that any property belonging to him has been embezzled or taken without his consent, and that he has reason to believe and suspect and does suspect that such property has been pledged with any pawnbroker, such justice, if satisfied of the correctness of such suspicions, shall issue his warrant, directed to any constable of the city or place, commanding him to search for the property so alleged to have been embezzled or taken, and to seize and bring the same before such justice.

The constable, to whom any such warrant shall be

directed and delivered, shall have the same power to execute the same, and shall proceed in the same manner as in the case of a search warrant upon a charge of larceny. And when he has seized the property he is to bring it before the officer who issued his warrant to be disposed of according to law. (2 R. S., 980 [711.] )

## CHAPTER V.

### POWERS AND DUTIES IN MISCELLANEOUS MATTERS.

#### 1. *Sale of property under a chattel mortgage.*

A chattel mortgage is a conditional bill of sale, subject to a defeasance, or prevention of the consummation of a perfect title on the performance of certain conditions to be performed by the mortgagor. Until there is a default in the conditions of the mortgage, the title to the property, subject however to the lien, remains in the mortgagor. Whenever default is made in the conditions to be performed by the mortgagor, the title to the property vests in the mortgagee according to the conditions of the mortgage. The more common conditions of forfeiture in the mortgage authorize the mortgagee to take possession of the goods and chattels mentioned in the mortgage, and take and carry away the said goods and chattels, and sell and dispose of the same for the best price he can obtain, and out of the money to retain and pay the sum mentioned in the mortgage with the interest and all expenses thereon, and render the overplus, if any, unto the mortgagor or his executors, administrators or assigns.

Under a mortgage containing the conditions last above specified, whenever the mortgagor has failed to perform the conditions, a constable, as agent for the mortgagee, may take possession of the property and expose it for sale in accordance with the conditions

specified in the mortgage if it contain any. If the mortgage does not specify in what manner, or on what length of notice the property is to be sold, then the constable should sell it in such a manner at public sale as will be of the best advantage both to the mortgagor and mortgagee.

In most cases it will be advisable for the constable to give a similar notice and for the same length of time as for the sale of goods of chattels under an execution, the notice should describe the goods and chattels taken, be signed by the constable, and put up at three public places in the city or town, where such goods and chattels shall be sold, and be put up at least five days before the time appointed for the sale.

The sale should be conducted in the same manner as a sale by a constable under an execution.

As soon as property enough has been sold to pay the amount specified in the mortgage with interest and costs, the conditions in the mortgage are satisfied, and the constable can proceed no further with the sale, and if he proceeds and sells more than sufficient to satisfy the mortgage he will be liable to an action for a conversion of the property. (*Charter v. Stevens*, 3 Denio, 33.)

2. *In execution of search warrants for books, &c., belonging to officers on the canals.*

It is the duty of every agent, toll-collector, lock-keeper or superintendent, employed on any canal, and occupying any house, office, building or land, belonging thereto, who shall be discharged from his employment; and of the wife and family, of every such person who

shall die in such employment to deliver up the possession of the premises so occupied, and of all books, papers, matters or things belonging to the canals, acquired by virtue of his office, within seven days after a notice shall have been served for that purpose, by the acting canal commissioner.

In case of a refusal or neglect to make such delivery, in either of the above cases, it shall be the duty of any justice of the peace of the county, where such premises shall be situate, upon application, to issue his warrant under his hand and seal, ordering any constable or other peace officer, with such assistance as may be necessary, to enter upon the premises so occupied in the daytime, and remove therefrom all persons found in possession thereof, and to take into his custody all books, papers, matters and things there found belonging to the canals, and to deliver the same to the acting canal commissioner, or his authorized agent; and the officer to whom such warrant shall be delivered, shall execute the same according to its purport. (1 R. S., 638 [250.] )

*3. In executing search warrants for public books and papers.*

If any person who has been removed from office, or whose term of office shall have expired, shall refuse or neglect to give over to his successor all books and papers in his custody as such officer, or in any way appertaining to his office, the successor may make complaint thereof to any justice of the supreme court, or the county judge, that such books and papers have been withheld, and the judge may thereupon issue an order directing the persons so withholding to show cause at a

time and place appointed, why he should not be compelled to deliver the same. On proof of due service of the order, if the person neglect to appear, or fail to show cause why he should not deliver up the books and papers, the officer shall issue his warrant directed to any sheriff or constable, commanding them in the daytime to search such places as shall be designated in such warrant for such books and papers as belonged to the officer so removed, or whose term of office expired, in his official capacity, and which appertain to such office, and seize and bring them before the officer issuing such warrant. If the judge or justice find that the successor in office is entitled to the books and papers he will order them to be delivered to him.

So, too, where a successor has been appointed on the death of a person holding any office, and any books and papers belonging to said office have come to the hands of any person who refuses to deliver them to the regularly appointed successor, the same proceedings as above mentioned may be taken to acquire possession of said books and papers. (1 R. S., 417 [125.] )

#### 4. *Serving papers for supervisors.*

Whenever the board of supervisors of any county shall deem it necessary or important to examine any person as a witness, upon any subject or matter within the jurisdiction of such board, or to examine any officer of the county, in relation to the discharge of his official duties, or to the receipt or disbursement of moneys, or concerning the possession or disposition by him of any property, belonging to the county ; or to use, inspect or examine any book, account, voucher or document in the possession of such officer or other person, or under his control,

relating to the affairs or interests of such county, the chairman or president of such board, shall issue a subpoena in proper form, commanding such person or officer to appear before such board, at a time and place therein specified, to be examined as a witness, and such subpoena may contain a clause requiring such person or officer to produce on such examination all books, papers and documents in his possession, or under his control, relating to the affairs or interests of the county.

It shall be the duty of the sheriff, or any deputy sheriff or constable of the county, to whom the subpoena may be delivered, to serve the same by reading it to the person named therein, and at the same time delivering him a copy thereof; and his official return thereon, of the time and place of such service, shall be *prima facie* evidence thereof.

If the person or officer so served refuse to appear, then any judge of the supreme, superior or county court, on application, will issue an attachment against such delinquent person; which attachment must be served by the sheriff of the county. (1 R. S., 853; Laws of 1858, ch. 190.)

#### 5. *To collect taxes.*

Whenever it shall satisfactorily appear to the treasurer of any county in the state, that any state or county tax legally assessed within his county (not assessments on real estate of non-residents), can not be collected by reason of the removal of the person so assessed to any other county of this state, it shall be lawful for the said treasurer to issue a warrant under his hand and seal, and certified by the clerk of the county, that he is such trea-

surer, to any constable or sheriff of the county where such person resides, to collect the same out of the personal property of such person.

Any sheriff or constable receiving such warrant, shall execute the same, and make the like returns, and be entitled to the same fees, and subject to the same liabilities and penalties for neglect, as upon executions from any court. ( 1 R. S., 921 ; Laws of 1836, ch. 461.)

#### 6. *Process of court marshal.*

Constables, as well as sheriffs, and marshals appointed for the purpose, are required to execute any precept issued by the president of any court martial or court of inquiry, for the purpose of procuring the attendance of witnesses to be sworn and testify, and to preserve order, as courts of common law jurisdiction. Such courts have authority, whenever persons, duly subpoenaed to appear before said courts, refuse or neglect without just cause to attend as witnesses, on application of the party on whose behalf such subpoenas were issued, and on showing that the testimony of such witness is material, to issue an attachment to compel the attendance of such witness, and the witnesses may be compelled to pay the costs of such attachment ; and when the costs are ascertained, may issue execution therefor : and which may be collected as other executions are collected when issued from courts of justice.

Any person or persons who shall be guilty of disorderly or contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expression to or before any court martial or court of inquiry, or any member of either of such courts, in open

court, may be committed to the jail of the county in which such court shall sit, by warrant under the hand and seal of the president of such court. Such warrant shall be directed to the sheriff or any or either of the constables and marshals of any such county, or any officer attending the court, and shall command the officer, to whom it is directed, to take the body of such person and commit him to the jail of the county, there to remain without bail or mainprize, in close confinement, for a time to be limited, not exceeding three days, and until the officer's fees for committing, and the jailor's fees be paid. Fees for constables for serving process for court martial are the same as for serving similar process in justices' courts. (1 R. S., 757, 758 ; Laws of 1854, ch. 398.)

## CHAPTER VI.

### DUTIES AS A PEACE OFFICER AND IN CRIMINAL PROCEEDINGS.

THE general duty of all constables, as well as of other peace officers, is to keep the peace in their several districts ; and for that purpose they are armed with very large powers of arresting and imprisoning, of breaking open houses, and the like. (Black: Com., book 1, chap. 9, § 4.)

A constable is justified, without a warrant, in apprehending and detaining until they can be carried before a magistrate, all persons found attempting to commit a felony (1 Moody's C. C., 93) ; or doing any act which would manifestly endanger the life of another ; or even in cases of threats of violence. As if a man in a passion threatens the life of another, the constable may arrest him, and bring him before a magistrate to be bound in surety of the peace ; and so in similar instances. (Barb. C. L., 44, 2d ed.)

It is the duty of constables to do all they can to preserve the peace within their respective constablewicks ; and for this purpose, they not only may but ought to apprehend any person, who shall make an affray or assault upon another in their presence, or who shall threaten to kill, beat or hurt another, or shall be ready to break the peace in their presence, and may take such persons before a justice of the peace, in order that they

may find surety for the peace, and in order the better to enable them to preserve the peace, they have authority to command all other persons to assist them in endeavoring to appease such disturbances as take place in their presence. (1 Russ. on Cri., 770.)

In cases of felony, a peace officer has not only authority to apprehend a felon, while committing the felony, but also upon pursuit, or information at any time afterwards; and he may even justify apprehending an innocent person, if he have reasonable ground to suspect that he is guilty of a felony, and this, although no felony has been committed. (Id., 771.) But in such cases the suspicion should be very strong, and the evidence of the commission of the offense, or of being implicated therein be very clear.

But whether a constable or other peace officer is warranted in arresting a person upon a charge by another, of a mere breach of the peace, after the affray is ended without a special warrant from a magistrate, is a point which has occasioned some doubt. If there is a danger of the party escaping he may perhaps apprehend him at once, but in cases where there is no danger of his escape he should procure a warrant previous to the arrest. (*Cook v. Nethercote*, 6 Car. and P., 741; Ros. Cr. Ev., 614.) But if one person threatens to kill another, who complains to the constable, the latter may, in order to avoid the present danger, arrest the party and detain him till he can conveniently bring him before a justice of the peace (2 Hale's P. C., 88), and this power is grounded on the duty of the officer to prevent a probable felony. (1 East's C. L., 306.)

If there be an affray in the house, where the doors

are shut, whereby there is likely to be manslaughter or bloodshed committed, the constable having notice thereof, and demanding entrance, if they refuse him entrance and continue the affray, the constable may break open the doors to keep the peace and prevent the danger. Further, if there be disorderly drinking or noise in a house at an unseasonable time of the night, especially in inns, taverns, or alehouses, the constable demanding entrance, and being refused, may break open the doors to see and suppress the disorder. (1 Hale's P. C., 95.) So if affrayers fly to a house and close the doors, and the constable immediately follow them, he may break open the doors, if they resist his entering. (Hawk. P. C., b. 1, chap. 63, § 16.) But if he wait until the affray is ended he cannot pursue and take them without warrant. (*Phillips v. Trull*, 11 John., 486.)

Any person who sees others engaged in fighting may lawfully apprehend them, and stay them till the heat be over, and then deliver them to a constable, who may carry them before a justice of the peace, in order to their finding sureties for the peace. (Barb. Cr. L., 45.)

When the assault is committed in the presence of the officer, he may arrest not only the individual who commenced the assault, but his companion, although he may have taken no part in the affray, but who does not withdraw himself or exert himself in some way to stop the disturbance. (*Lewis v. Arnold*, 4 C. & P., 354.) And he may arrest a person who merely stands in the way so as to hinder him from interfering to keep the peace. (*Levy v. Edwards*, 1 C. & P., 40.)

If a person, without committing any assault, make such a noise or disturbance in a public house as would

create an alarm, and disquiet the neighborhood, the constable may apprehend him. (*Howell v. Jackson*, 6 C. & P., 723.) Where persons assemble with a mob before a shop door and interrupt the owner's business, the constable may arrest such of them as create the disturbance. (*Ingle v. Bell*, 1 Mees. & Wels., 616.)

Whenever a riot or an affray commences, the constable should at once command the peace, and that the rioters desist, and if they do not, he should at once proceed to take the rioters into custody, and, if necessary, he should command the bystanders to assist him ; and if they refuse to do so, they become liable to arrest, and if he be not able to take them into his custody at the time, he may, on complaint afterward before a magistrate, obtain a warrant for their arrest. If the constable is in the immediate neighborhood for which he was elected, and it be in the daytime, it is not absolutely necessary for him to give notice that he is a peace officer, and especially not if he have with him any insignia of his office ; but if it be in the night, or he be at a distance from his usual place of residence, he should give notice that he is an officer, and what he intends to do. (East's C. L., 314, 315.)

When the constable has arrested his prisoner he should immediately take him before some justice of the peace in order that he may be bailed or committed, as the case shall require ; but till bailed or committed or discharged, the prisoner must remain under the charge of the constable who took him. Till the constable can conveniently convey the party arrested to a justice of the peace, or the common jail, he may detain him in any convenient lockup for the night : and if the person be

sick, the constable may keep him for a day and a night at least, and in some cases of necessity, for a longer time, till he can with safety and convenience convey him to a justice of the peace. (2 Hale's P. C., 95.) But when a constable detained a party three days in order that a person whose goods had been stolen might have an opportunity of collecting his witnesses and bringing them to prove the felony, it was held he was not justified in so doing. (*Wright v. Court*, 4 B. & C., 596.)

When an arrest has been made without a warrant, the constable may, in some cases, take the party's word for his appearance before a magistrate: and this is frequently done where the charge is for an assault of a trifling nature, and the defendant is of good repute and there is no probability of his absconding. (*Hardy v. Murphy*, 1 Esp., 295.)

In general when an affray takes place in the presence of a constable, he may either keep the parties in custody till the affray is over or he may carry them immediately before a magistrate. (*Churchill v. Mathews*, 2 Selw. N. P., 911.)

In most cases of riots, assaults and affrays, the officer has to act on the instant, and without being able to protect himself, by a warrant for the arrest of the rioters. But in all those cases that arise where large and improper gatherings are made, for the purpose either of riot or to witness races, bull-bating, prize-fighting, or cock-fighting, the constable should apply to a magistrate for a warrant against the leaders in order that they may be held to bail to keep the peace, and thus an unlawful assembly will be prevented. Says Justice BURROUGH, "My advice to magistrates and constables is, in cases when they have informa-

tion of a fight, to secure the combatants beforehand, and take them to a magistrate, who ought to compel them to enter into securities to keep the peace till the next assizes or sessions ; and if they will not enter into such security, to commit them to prison." (*Rex v. Billingham*, 2 C. & P., 234.)

A prisoner who may be confined in a state prison, county jail or penitentiary, upon conviction for a criminal offense, and escaping therefrom, may be retaken at any time without a warrant, and imprisoned again until tried for such escape, or until he be discharged on failure to prosecute therefor. (3 R. S., 965 [685].)

A magistrate may cause an officer by word only, to apprehend a person committing a felony or breach of the peace in his presence. (4 Black. Com., 292.) And in suppressing riots the magistrate may order the offender into the custody of an officer for safe keeping until he can be tried. (Barb. Cr. L., 496.)

The more usual arrests made by a constable are made by virtue of a warrant.

A warrant (criminal) is a writ issued by a justice of the peace or other authorized officer, directed to a constable or other proper person, requiring him to arrest a person therein named, charged with committing some offense, and to bring him before that or some other justice of the peace. It should regularly be made under the hand of the justice and dated. No warrant ought to be issued except upon the oath or affirmation of a witness charging the defendant with the offense. (Bouv. Law Dict., title Warrant.)

The several officers in this state authorized to issue criminal warrants are justices of the supreme court ;

judges of the superior court of the city and county of New York; judges of county courts, mayors, recorders and aldermen of cities; the justices of the justices' court, and police justices in the city of New York, and justices of the peace and police justices appointed for any city or elected in any town (3 R. S., 993 [706]); and coroners have power to issue a warrant to apprehend a party, whenever he shall hold an inquest, and the jury shall find that any murder, manslaughter or assault has been committed, and the person charged with such offense is not in custody. (3 R. S., 1037 [743.] )

Warrants issued by either of the officers above enumerated may be executed in any part of this state, except such as are issued by any justice in New York, or by any alderman or justice of the peace; warrants issued by any such assistant justice, alderman or justice shall not be executed out of the county within which they are officers unless indorsed by a justice of the peace or other magistrate above named, within the county where such offender shall be. When the person against whom any warrant, granted by any alderman or justice, shall be issued, shall escape, or be in any other county, out of the jurisdiction of such alderman or justice, it shall be the duty of any justice of the peace or other magistrate above named, within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting issuing the warrant, to indorse his name on the same; and thereupon the person bringing the warrant, or any other officer to whom it may have been directed, may arrest the offender in the county where the warrant was indorsed. (3 R. S., 993 [707.] )

The constable should see that the warrant is regular

on its face. It must be directed to the constable or to any constable of the county, for if directed to the sheriff the constable cannot execute it, and it must show that an offense has been committed; if known, the name of the person should be correctly stated, because the officer cannot justify an arrest under a wrong name, unless the party was known by one name as well as the other (*Gurnsey v. Lovell*, 9 Wend., 320); and the correctness must extend even to the Christian name; as where the name Emeline was written instead of Evelina the officer was not protected (*Scott v. Ely*, 4 Wend., 555): but if the party is unknown the warrant should contain the best description the nature of the case will admit (*Barb. Cr. L.*, 525); the offense should be specifically charged that the prisoner can at once determine its nature (see *People v. McLeod*, 1 Hill, 377); if it is for feloniously taking property, the value thereof should be stated (*Howell v. The People*, 2 Hill, 281), and if not it will be deemed to be petit larceny, and the prisoner may be admitted to bail for that offense (*Payne v. Barnes*, 5 Barb., 465); no portion of the warrant should be left blank to be filled by the constable, and the official title of the magistrate should be annexed to his signature to show that he had authority, and it may be signed by him with or without seal. (3 R. S., 993 [706.]) It should not be returnable at a particular time; for that might detain the party in custody, and the law has fixed the time for its return immediately, for if it should order the prisoner to be committed until the following day, even though it were issued late Saturday it would be erroneous, and the officer obeying it would be guilty of false imprisonment. (*Pratt v. Hill*, 16 Barb., 303.)

The officer looks to the warrant alone for his protection, and if it is issued by an officer or court having jurisdiction of the subject matter he is protected (*Parker v. Walrod*, 16 Wend., 514; *Webber v. Gay*, 12 Wend., 485), and he will be protected if the warrant even be defective in some of its minor requirements which may be amended. (*Dominick v. Eacker*, 3 Barb., 17.)

The constable, on receipt of the warrant, should proceed with secrecy to find out and arrest the party; and if he refuse or neglect to execute the warrant, he will be punishable for his disobedience or neglect. (Cro. Eliz., 654; Hale, 581.)

To constitute an arrest, the party against whom the process is awarded, must be either actually touched by the officer, or confined in a room, or must submit himself by words or actions to be in custody. (*Genner v. Sparkes*, 1 Salk., 79.) And when the officer employs others to assist him he must be so near as to be acting in the arrest in order to render it legal; although it is not necessary that he should be actually in sight at the instant of the arrest. (*Blatch v. Archer*, Cowp., 65; *Coyles v. Hurtin*, 10 John., 85.)

The arrest may be made either in the day or night time. And no persons are exempt as in civil actions. (Crocker, 37.) And though arrests in general are prohibited on a Sunday, cases of treason, felony and breach of the peace are excepted, and as no time is usually prescribed in the warrant, it continues in force until fully executed, though it were seven years after its date, during the lifetime of the magistrate by whom it was granted. (Allen, 118.)

A regular officer is not bound to exhibit his authority

when he arrests a defendant, or apprehends an offender; though a special deputy is (*Arnold v. Steeves*, 10 Wend., 514); but if the party, on whom the process is served, demand a copy thereof the officer must furnish it without any compensation (3 R. S., 739 [440.]) except in those civil cases where a specific fee is allowed by law.

After a peaceable arrest, however, if the party requires it, the officer ought to show the warrant, to tell at whose suit, for what cause, by what process, and in what court returnable the arrest is made; otherwise it will be wrongful. (9 Co., 69 a.)

If the constable has a warrant he may break open outer doors, to arrest an offender, for treason, felony, suspicion of felony, or actual breach of the peace, or to search for stolen goods, if otherwise he cannot be taken (1 Hale's P. C., 583), but he should first announce his business and demand that the door be open. (2 Hale's P. C., 117.) And the warrant will be a complete justification to the officer acting *bona fide* under it, although the person accused should be innocent. (4 Black. Com., 291; Cro. Eliz., 130.) And if in the attempt to execute a lawful warrant by breaking into the house of a felon, after previous demand of an officer, for admittance, the officer be killed by the party resisting, it will be murder in all concerned; and if, on the other hand, he unavoidably kill any of the parties opposing him the homicide will be justifiable because in furtherance of justice. (1 Hale's P. C., 494.) If the offender has been arrested, and breaks away from the officer and shut himself up in his own house, the door may be broken open by the

officer without making a demand for admittance. (*Allen v. Martin*, 10 Wend., 300.)

But in all the above cases the warrant must be in all material respects valid and sufficient or it will not be a protection to the officer. (Allen, 124, 125.)

The house of a third person, if the offender fly to it for refuge, is not privileged, but may be broken open after the usual demand (5 Co., 91); but then he must at his peril see that the felon be there, for if the felon be not there, he is a trespasser to the stranger whose house it is. (2 Hale's P. C., 117.)

After a party has been once actually arrested and escapes from custody, any door may be broken without demand of admittance for the purpose of retaking him. (Allen, 126.) So, too, after indictment found. (Crocker, 38.)

The degree of force which the officer is authorized to use, in arrest and to prevent flight or escape, depends upon the degree of the offense for which the arrest is made. When the offender is apprehended for a felony or to prevent a commission of a felony, or for a dangerous wound given, and he attempt to break away and escape, or to avoid an arrest, and happen to be wounded or killed by the officer in endeavoring to prevent his escape, when without such force he could not be taken, the officer will not be responsible. (East's C. L., 298.) But if he may be taken without such severity, the officer would be liable. (1 Hale's P. C., 489.) But in cases of affray, assault or other misdemeanor, and the party flies to avoid arrest, but does not with force resist the officer, if the officer kill him in the attempt to apprehend him, the law will not, in general, protect him,

though under certain circumstances the offense may be manslaughter, if it appears that death was not intended. (1 East's C. L., 302 ; Barb. Cr. L., 539.)

When the officer has made his arrest he is to bring the party to the jail or the justice, according to the import of his warrant ; and if he be guilty of unnecessary delay, it is a breach of duty. (2 Hale's P. C., 119.) The usual direction in the warrant is that the offender be brought before the justice issuing the same. (3 R. S., 994 [707.]) If the time be unseasonable, as in or near the night, whereby he cannot attend the justice, or the party be ill and unable at present to be brought, or if there be danger of a rescue, he may secure him in some proper place until it may be reasonable to bring him. (2 Hale's P. C., 119.)

If a constable, after he hath arrested the party by force of any warrant of a justice of the peace, suffer him to go at large, upon his promise to come again at such a time and find sureties, he cannot afterwards arrest him by force of the same warrant. However, if the party return and put himself again under the custody of the constable, the constable may lawfully detain him. (2 Hawk. P. C., ch. 13, orig. sec. 9.) But if he escapes without the concurrence of the officer, he may be retaken as often as he flies, and upon fresh suit, although he reaches another county. (Allen, 127.)

If the magistrate, on the return of the officer with the offender, be absent, or his office be vacant, the officer is to deliver the offender with the warrant, with a proper return indorsed thereon signed by the officer making the arrest, to the nearest magistrate. (3 R. S., 995 [707.]) The return of the constable must show distinctly that

the magistrate who issued the warrant is absent or his office is vacant. (*People v. Fuller*, 17 Wcod., 211.)

When the person is arrested in another county from that in which the warrant issued, and the offense charged in the warrant be not punishable with death or by imprisonment in the state prison, he may demand of the officer that he be taken before a justice of the county where he is arrested, and he may there give a recognizance with sufficient surties, for his appearance at the next court, having cognizance of the offense to be held in the county where the offense shall be alleged to have been committed. If the magistrate admit to bail, he shall indorse that fact on the warrant, and deliver it, with the recognizance to the constable, who shall, without unnecessary delay, deliver them to the clerk of the court in which such prisoner shall be recognized to appear. But if the magistrate refuse to let to bail, then the officer or person having him in charge shall take him before a magistrate of the county in which the warrant was originally issued. If the offense charged in the warrant be punishable with death or with imprisonment in the state prison, then the party so arrested must be taken before a magistrate of the county in which the warrant was issued. (3 R. S., 994 [707.] )

When the prisoner is brought before the officer he is still considered to be in the custody of the officer until he is either discharged, bailed, or committed to prison. (2 Hale's P. C., 120.)

The magistrate, on the hearing before him, may discharge, hold to bail or commit the prisoner. If he is discharged for want of evidence of guilt, or on giving a recognizance to appear before some court having juris-

diction of the offense charged, the force of the warrant will be spent, and he cannot be retaken on the same warrant, although he should give bail to appear at a time and place when no court is to be held. (*Doyle v. Russell*, 30 Barb., 300.)

Where the prisoner is committed to answer the charge, if he desires and is ready to give bail, the officer must take him before some proper judge or officer authorized to take bail in the case, if the committing magistrate is not authorized to do so; and on his giving bail in the amount and with the sureties satisfactory to the judge or officer, he is to be released, and the duties of the officer having him in charge are at an end. If he does not give bail, the officer must forthwith deliver him to the custody of the jailor, at the jail of the county. (Crocker, 44.)

The constable is not obliged to return the warrant itself to the justice, but may keep it for his own justification in case he should be questioned for what he had done, and need only return to the justice what he has done in pursuance of its commands. (*Regina v. Wyatt*, 2 Ld. Ray., 1196; 1 Chit. Cr. L., 60.)

Any person, charged with an offense of which the special sessions has jurisdiction, when brought before the magistrate for examination, may demand that he be forthwith tried by the special sessions. In case the offender does not demand a trial, he is to be committed either to the jail or to the custody of the officer for twenty-four hours, to allow him time to obtain bail for his appearance at the next term of a court having jurisdiction of the offense. But if he does not make such request, and does not find bail within twenty-four hours

from the time of his commitment, he is to be tried by a court of special sessions. (3 R. S., 1002, 1003 [712].)

Special sessions were formerly held by three magistrates, either three justices of the peace, or by two justices and a county judge : but now the special sessions may be held by a single justice, with or without a jury, at the election of the prisoner. (3 R. S., 369 [223.] )

If the prisoner does not offer bail within the twenty-four hours allowed him for that purpose, the justice issues his order that the prisoner be brought before him. If the defendant does not plead guilty he may be tried by the justice unless he demands a jury. If he demand a jury the court issues a venire directed to any constable of the county or marshal of the city where the offense is to be tried, commanding him to summon twelve good and lawful men, qualified to serve as jurors, and not exempt from such service by law, and who shall be in nowise of kin either to the complainant or the defendant, to be and appear before such court, at a time not more than three days from the date of the venire, and at a place to be named therein, to make a jury for the trial of such offense.

The officer, to whom such venire shall be delivered, shall execute the same fairly and impartially, and shall not summon any person whom he shall suspect to be biased or prejudiced for or against the defendant. He shall summon the jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return with it to the court. From this number six persons are to be drawn to form a jury ; and if a sufficient number do not appear, the constable may be directed to summon others to supply the

deficiency. If the officer, to whom the venire shall have been delivered, shall not return the same, as thereby required, the court shall issue a new venire, upon which the same proceeding shall be had, as is provided in respect to the first venire. (3 R. S., 1003, 1004 [713.] )

Constables may serve subpoenas for the courts of special sessions, in the same manner as subpoenas are served in justices' courts except that the witnesses are not entitled to fees for their attendance (3 R. S., 1011 [717] ), and for their non-attendance they may be attached. When the evidence and allegations have been submitted to the jury, they are to be kept together and attended by a constable in the same manner as on trials in justices' courts. (Id., 1004 [713.] ) If the defendant is found guilty, he is to be punished by fine or imprisonment, or both, and the warrant is to be executed by the officer to whom it is directed and delivered. If the defendant be fined, and neglect or refuse to pay the fine he is to be committed to the county jail. (3 R. S., 1010 ; Laws of 1830, ch. 42.)

The warrant of commitment should be directed to the officer, or to a class of officers, by whom it is executed or it will be void. (*Russell v. Hubbard*, 6 Barb., 654.)

If the fine is paid before commitment, it is to be received by the magistrate who holds the court ; if paid after commitment it is to be received by the sheriff, and by either officer to be paid to the county treasurer. (3 R. S., 1010 [716.] )

A search warrant is a warrant requiring the officer, to whom it is addressed, to search a house or other place therein specified, for property alleged to have been stolen ; and if the same shall be found upon such search,

to bring the goods so found before the officer granting the same, or before some other lawfully authorized officer (Bouv. L. D.) : and it may include within it an order for the arrest of the person in whose custody the goods are found. (*Bell v. Clapp et al.*, 10 Johns., 263.) It may be issued by the same officers who are authorized to issue warrants for the apprehension of offenders (*ante*, pp. 129, 130).

The warrant is to be directed to the sheriff of the county, or any constable or marshal of the town or city, and shall command him to search the place, where such property is suspected to be concealed, in the daytime (which place shall be particularly designated and the property shall be particularly described in such warrant), and to bring such property before the magistrate issuing such warrant. If there be positive proof that any property stolen or embezzled is concealed in any particular house or place, the warrant may authorize the searching of such house or place in the night time. When property alleged to have been stolen shall come into the hands of a constable, he shall hold the same subject to the order of a magistrate authorized to direct the disposition thereof. The magistrate who shall take the examination of the person accused of stealing such property, may order the same to be delivered to such owner on his paying the reasonable and necessary expenses incurred in the preservation of such property. And if the property stolen shall not have been delivered to the owner thereof, the court, before which a conviction shall be had for the stealing of such property, may, upon proof of the ownership of any person, order the same to be restored. If it is not claimed before the expiration of six months

from the time any person shall have been convicted of stealing such property, the property is to be delivered to the county superintendents of the poor, on his or their paying the reasonable and necessary expenses incurred in the preservation thereof. (3 R. S., 1041 [747.])

The warrant must be entirely filled up before it is issued to the constable, and shall have no blank either in the date or otherwise at the time it is delivered to the officer. It must be signed by the justice and may be under seal or without seal. (3 R. S., 454 [267.])

A general warrant to search all suspected places for stolen goods would be illegal, besides it would be extremely dangerous to leave it to the discretion of a common officer to arrest what persons, or search what houses he think fit. (Chit. Cr. L., 66.)

The constable should follow strictly the directions of the warrant, and he will be protected by it in seizing the particular property therein specified. If the outer door is shut he may, after a demand and refusal to open the outer door, break it, or any other door in the house (*Bell v. Clapp et al.*, 10 Johns., 263), and so he may boxes after the keys have been demanded, even though the goods be not found. (Chit. Cr. L., 66 ; *Beatty v. Perkins*, 6 Wend., 382.) If he seizes goods which correspond with, and come within the description of those which he is commanded by the warrant to search for, he is not liable to an action, though the goods so seized by him may not be the same which were lost by the complainant. (*Stone v. Dana*, 5 Met., 98.) But if he should take other goods not described in the warrant, or which do not come within the description in the warrant, he would be a trespasser (*Crozier v. Candey et al.*, 6 B. & C.,

232) ; yet if they were likely to be needed in substantiating the charge of stealing the goods, they may be taken. (*S. C.*, Crocker, § 80.)

The constables should see that the goods are well taken care of while in their possession, but they are not liable for any injury done to the property after they have brought it to the magistrate's office. (*Price v. Messenger*, 3 Esp., 98.)

## CHAPTER VII.

### CERTAIN PROHIBITIONS AND PENALTIES PERTAINING TO THE OFFICE OF CONSTABLE.

THE constable who serves either the original or jury process in an action in the justices' court shall not appear and advocate for either party at the trial, but may act as attorney in any other stage or proceeding in the cause. (3 R. S., 433 [233.] )

A constable shall not, directly nor indirectly, buy, or be interested in buying, any bond, note or other demand, or cause of action, for the purpose of commencing any suit thereon before a justice, nor shall a constable, either before or after suit brought, lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money or other valuable thing to any person, in consideration of, or as a reward for, or inducement to, the placing or having placed in the hands of such constable, any debt, demand, or cause of action whatever for prosecution or collection.

No constable shall ask or receive any money or valuable thing from a defendant, or any other person, as a consideration, reward, or inducement for omitting to arrest any defendant, or to carry him before any justice; or for delaying to take any party to prison; or for postponing the sale of any property, under any execution; or for omitting or delaying the execution of any duty pertaining to his office. Every constable offending

against either of the above provisions shall be deemed guilty of a misdemeanor, and, on conviction, shall be subject to fine or imprisonment, or both, in the discretion of the court. And every such conviction shall work a forfeiture of the office of the constable so convicted. The defendant in any suit to be brought in any action of debt, covenant, or assumpsit may give notice with his plea, in addition to any other matter of defense, that on the trial of the cause he will insist and prove that the demand on which such action is founded has been bought and sold, or received for prosecution contrary to law, without setting forth any other particulars.

The defendant, in any such suit may serve a notice on the plaintiff, two days before the trial, requiring him to appear personally on such trial and be examined; and it shall be the duty of the plaintiff to attend, and he is to be allowed the like fees as are allowed witnesses, but he is not required to attend to give evidence, except from the same county, or the county next adjoining that in which the cause is tried. If the plaintiff in such case do not attend such trial, on proof of due service of the notice, he may be nonsuited in the action. The attorney of the plaintiff may also be examined in regard to such defense. Or if on such trial it shall appear that the cause of action on which such suit is founded has been bought or procured, contrary to the true intent of the provisions of this article, the plaintiff in such action shall be nonsuited. (3 R. S., 455 [268.])

The object of the foregoing provisions was to prevent constables from purchasing debts or other things in action in order to obtain costs by prosecuting the same, and is not intended to prevent such purchases for the

honest purpose of protecting some other important right of the assignee. (*Baldwin v. Latson*, 2 Barb. Ch., 306.) The complaint in actions referred to above should set up that the plaintiff was actually constable at the time of his purchase of the demand (*Warren agt. Helmer*, 8 How., 420): and the intent must be proved otherwise than by the mere fact of the purchase while he is such officer. (*Hall v. Bartlett*, 9 Barb., 297.)

No constable shall, directly or indirectly, purchase any goods or chattels at any sale made by him upon execution; but every such purchase shall be absolutely void. (3 R. S., 448 [252].)

If a constable neglect to return an execution within five days after the return day thereof, the party in whose favor the same was issued may maintain an action of debt against such constable, and shall recover therein the amount of the execution, with interest from the time of the rendition of the judgment upon which the same was issued. (3 R. S., 449 [253].) And it is not necessary to show that he has collected any money, to sustain the action (*Sloan et al. v. Case*, 10 Wend., 370), and his sureties will be liable equally with him if he has collected money, even if the obligation signed by them was not perfect in all its parts. (*Skellinger v. Yendes*, 12 Wend., 306.)

If the constable having an execution neglect to levy on property and sell it for the purpose of satisfying the judgment, and instead thereof arrests the defendant and take him to prison, he will make himself liable to an action. (*Platt v. Sherry*, 7 Wend., 236.) So, too, where he sells property and on the sale there is left an overplus more than is sufficient to satisfy the judgment,

he should return such overplus to the defendant. (3 R. S., 448 [252]), if he does not before the return day of the execution he will be liable to an action from the defendant, but such action will not lie until the return day unless a demand of the money has been made. (*Bortel v. Ostrander*, 15 How., 572.)

If the constable enter upon the duties of his office after his election or appointment and before he shall have taken such oath, he shall forfeit to the town the sum of fifty dollars. (1 R. S., 827 [347.] )

If any constable shall willfully refuse to execute any lawful process directed to them, requiring the apprehension or confinement of any person charged with a criminal offense; or shall corruptly and willfully omit to execute such process, by which such person shall escape; or shall willfully suffer any offender lawfully committed to his custody to escape and go at large; or, shall receive any gratuity or reward, or any security or engagement for the same, to procure, assist, connive at, or permit any prisoner in his custody, on any civil process, or on any criminal charge or conviction, to escape, whether such escape be attempted, or effected, or not; he shall, upon conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both such fine and imprisonment, and shall forfeit his office, and shall be forever disqualified to hold any office or place of trust, honor, or profit, under the laws or constitution of this state. (3 R. S., 965 [685.] )

Every constable to whom process shall be directed, and delivered agreeably to the provisions of the statute, shall execute the same in person, and shall not act by

deputy in any case. (3 R. S., 460 [273.] ) And a constable, to whom an execution is directed and delivered, has no power to delegate his authority to another. And it is no defense to an action against a constable for failure to return an execution and pay over the money collected, that he delivered the execution to another constable to levy, and the other collected the money and offered to pay it to the plaintiff, less an extra compensation agreed to by the plaintiff at the time of issuing the execution. (*Dows v. McGlynn*, 6 Abb., 241.) The agreement for extra compensation herein was void, and an officer, the fees for whose official services are prescribed by law, cannot maintain an action on a promise of extra compensation for extra services, although services beyond what could legally be required are rendered by the officer. (*Hatch v. Mann*, 15 Wend., 44.)

Every constable, or other officer to whom shall be directed and delivered any attachment, summons, precept to summon a jury, warrant to apprehend a witness or any other person, or any other process authorized by law to be issued by a justice of the supreme court, judge of county courts, or justice of the peace in any special proceeding or matter before such judge, commissioner or justice, except civil suits before justices of the peace, shall execute such process as therein commanded, and for any willful neglect so to do, may be fined by the officer issuing the same in a sum not exceeding twenty-five dollars.

When any constable, or other officer, who shall have summoned any jury, excepting in civil suits, shall be required by the officer issuing such summons, to attend

such jury and take charge of them, he shall be bound to do so ; and for any willful neglect to obey such order, or for any misconduct while attending such jury, by which the right or remedies of any party to such proceedings may be impaired or prejudiced, such constable or other officer shall be liable to be fined by the officer before whom such jury shall have appeared, in a sum not exceeding twenty-five dollars. Upon such fine being imposed, notice thereof shall be given to the person fined, to the end that he may render any excuse to the officer imposing the same, or show cause why such fine should be remitted.

If no such excuse be rendered or cause shown within thirty days after the service of such notice, and such fine shall not have been remitted by the officer imposing the same, such officer shall make a special return of the delinquency or misconduct for which such fine was imposed, with the amount thereof, to the next county court of the county in which such delinquent shall reside.

The clerk of the court to which such return shall be made, shall deliver a copy thereof to the district attorney of the county, with copies of the minutes of fines imposed by such court and in the same manner ; which shall be collected, and may be remitted or mitigated, in the same manner as fines imposed by courts of record upon defaulting jurors. (3 R. S., 865, 866 [551.] )

If any constable, or other person, shall confine any lunatic or mad person whose maintenance is chargeable to any town or county, in any other manner or in any other place than such as are prescribed in the statute he shall be guilty of a misdemeanor ; and on conviction

shall be liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment not exceeding one year, or to both, in the discretion of the court before which the conviction shall be had. (2 R. S., 884 [625.] )

Any officer or other person refusing to deliver a copy of any order, warrant, process, or other authority, by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained. (3 R. S., 892 [573.] )

If any person be arrested and kept in any house other than the jail of the county, neither the officer arresting him, nor the person in whose custody such prisoner may be, shall demand or receive from such prisoner any other or greater sum for lodging, drink, victuals, or other necessary things, than shall have been prescribed by the court of sessions of the county ; or if no rate shall have been prescribed by such court, such officer or person shall not receive any other or greater sum than shall be allowed by a justice of the peace of the same town, upon proof that the lodgings or other things furnished were so furnished at the request of such prisoner. And in no case shall such officer or person demand or receive any pay or compensation for any spirituous liquors sold or delivered to such prisoner.

A prisoner so kept in any house, may send for and have any beer, ale, cider, victuals and other necessary food, and such bedding, linen, and other necessary things as such prisoner shall think fit, where and from whom he pleases, without any detaining or paying for the same,

or any part thereof, to the officer arresting him, or to the person in whose custody such prisoner may be.

No officer shall demand or receive any money or valuable thing whatsoever for the chamber rent of any prison, or any fees, compensation or reward for the commitment, detaining in custody, release or discharge of any prisoner, other than such fees as are expressly allowed by law.

When a sheriff or other officer shall arrest any person by virtue of any mesne or final process, or by virtue of any other civil process, he shall not charge such prisoner with any sum of money, or demand, or receive from him any sum of money, or any valuable thing, for any drink, victuals or other thing whatsoever, furnished or provided for such officer, or for such prisoner, at any tavern, ale-house or public victualing or drinking house.

No sheriff or other officer who shall have arrested any person shall, while such person is in his custody, demand or receive any gratuity or reward, upon any pretense whatsoever, for keeping such prisoner out of jail, or for waiting for such prisoner to find bail or agree with his adversary, or for waiting for any other purpose. (3 R. S., 724 [426.] )

The liability of a constable for not returning an execution is not strictly a penalty within the Revised Statutes, and the action, being for an omission, and not for an official act, is transitory. (*Hopkins v. Haywood*, 13 Wend., 265.)

No action can be sustained for not returning an original execution which the plaintiff has directed and permitted to be renewed. (*Homan v. Liswell*, 6 Cow., 659.) But it will lie where the constable voluntarily relin-

quishes a sufficient levy upon property for the defendant's body, whereby the debt is lost. (*Platt v. Sherry*, 7 Wend., 236.)

The constable must return the execution by delivering it, with an indorsement thereon of his doings under it, to the justice who issued it, at his office, or to some person therein, who is authorized by the justice to receive and file it away. If, when the return is due, the justice is absent from the county, and his office, though open, is untended, the constable cannot return the execution, and an action upon his official bond or security, for his alleged neglect to return it, cannot be maintained. (*Ross v. Eisman*, 1 Clinton's Digest, 597.)

In the action upon the security, for not collecting an execution issued upon a justice's judgment, the plaintiff must prove that the justice had jurisdiction both of the subject matter of the action and of the defendant's person. (*Westbrook v. Douglass*, 21 Barb., 602.)

In the city of New York the bond of the constable is to be given to the mayor, aldermen and commonalty of the city in the penal sum of five hundred dollars, and be delivered to the mayor, who shall judge of and determine the competency of the sureties, and file the bond with the clerk of the city and county. And in case of recovery by any person aggrieved, against any such constable, it shall be lawful for the judge or judges of the mayor's court, or one of the other courts, upon motion in open court, and upon showing that such recovery has been had, and that the judgment at the time of such motion is unsatisfied, to order the bond to be put in suit; and when judgment thereon is obtained, the said court shall, on motion in open court, direct so much to be

levied thereon as will pay the debt or damages recovered by the party aggrieved, with costs, and to be paid to such party; and the act provides for further levy upon recovery of other judgments against such constable upon like motion. (*Davis v. Haffner*, 2 Abb., 187.)

A bond, in the form prescribed in the Revised Statutes relating to towns, and made to the people, is, therefore, not to be sustained as a statute security for a constable (*Id.*), and where a judgment had been obtained on such security the decision was reversed. (*Brown v. Jones*, 3 Abb., 80.)

## CHAPTER VIII.

### CONSTABLES' FEES IN JUSTICES' COURTS.

For serving a warrant or summons, twenty-five cents.

For a copy of every summons delivered on request, or left at the dwelling of the defendant in his absence, fifteen cents.

For serving an attachment, seventy-five cents; for a copy thereof, and of the inventory of the property seized, left at the last residence of the defendant, seventy-five cents.

For serving an execution, five cents for every dollar collected to the amount of fifty dollars, and two and a half cents for every dollar collected over fifty dollars.

For every mile, going only, more than one mile, when serving a summons, warrant, attachment or execution, ten cents: to be computed from the place of abode of the defendant, or where he shall be found, to the place where the precept is returnable.

For notifying a plaintiff of the service of a warrant, twenty-five cents; and for going to the plaintiff's residence, or where such notice was served, ten cents for every mile more than one; for subpœnaing, not exceeding four, twenty-five cents.

Summoning a jury, seventy-five cents.

For serving affidavit, notice and summons in an

action to recover possession of personal property, fifty cents; for a copy of such affidavit, notice and summons, left with the defendant, his agent, or at the last place of abode of the defendant, fifty cents; for every mile travelled going and returning to serve such affidavit, notice and summons, the distance to be computed from the place where the precept is returnable, to the place of the abode of the defendant, or where he shall be found, ten cents; for taking charge of a jury during their deliberations, fifty cents. (Laws of 1869, ch. 820.)

*Fees in the city of Albany.*

For serving a summons, forty cents.

For a copy of every summons delivered on request, or left at the dwelling of the defendant, in his absence, ten cents.

For serving a warrant, fifty cents.

For serving an attachment, fifty cents; for a copy thereof, and of the inventory of the property seized, left at the last place of residence of the defendant, fifty cents.

For serving an execution, five cents for every dollar collected, to the amount of fifty dollars; and two and a half cents for every dollar collected over fifty dollars; and for giving notice of every sale under an execution, twenty-five cents.

For every mile, going only, more than one mile, serving a summons, warrant, subpœna, attachment or execution, ten cents: to be computed from the place of abode of the person against whom said

process is issued, or where he shall be found, to the place where the process is returnable.

For notifying the plaintiff of the service of a warrant, twenty-five cents; and for going to the plaintiff's residence, or where such notice shall be given, six cents for every mile, going only, more than one mile.

For summoning a jury, seventy-five cents.

For serving a subpoena, fifteen cents; but no allowance shall be made in any judgment for service, or for the travel in making such service, upon more than four witnesses in any action.

For arresting and committing any person pursuant to any writ, warrant or process, fifty cents; and for going to serve the same, the same fee as is provided for going to serve a summons. (3 R. S., 407; Laws of 1856, ch. 184.)

*In special proceedings.*

Serving a summons, twenty-five cents; serving a warrant, fifty cents; mileage, for going only, six cents for each mile.

Levying any fine, penalty or sum, pursuant to any warrant, the same fees as are allowed for similar services on executions for justices' courts.

Arresting and committing any person pursuant to process, one dollar, and mileage, for going only, ten cents. (Laws of 1869, ch. 820.) And for any services not specifically provided for, which may be rendered by a constable, the same fees as are allowed by law to sheriffs for similar services.

For attending any court pursuant to a notice from the sheriff for that purpose, two dollars for each day, and five cents a mile for each mile travelled in going to and returning from such court; which fees shall be chargeable to the county, and shall be paid by the treasurer thereof, on the production of the certificate of the clerk, specifying the number of days (3 R. S., 927 [647]) and distance travelled. (Id.)

If the constable is summoned and actually attends court, under the statute he is entitled to his fees although he does not actually serve as constable. It is enough that he is attending and ready to serve; and it is no objection to allowing him his fees, that he was a deputy sheriff and attended court as such. (*The People v. Supervisors of Columbia*, 4 Cow. 148.)

*On trials of habitual drunkards.*

Summoning a jury, one dollar; and for attending such jury when required, fifty cents; serving an execution, two cents and five mills per dollar; advertising goods, or chattels, lands or tenements, for sale on execution, two dollars; and if the execution be stayed or settled, after advertising and before sale, one dollar; returning an execution, sixty-two cents. (Being the same services as are allowed sheriffs for similar proceedings. (3 R. S., 924, 925 [645]. )

In proceedings to reassess damages, for laying out, altering or discontinuing a road or highway.

For summoning a jury, two dollars; for serving a summons, twenty-five cents; for serving an execution, or levying any fine or penalty pursuant to any warrant, five cents for every dollar collected, to the amount of fifty dollars; and two and a half cents for every dollar collected over fifty dollars; for every mile going only, when serving a summons, warrant, or execution, six cents: to be computed from the place of abode of the defendant, or where he may be found, to the place where the precept is returnable. (Laws of 1869, ch. 820.)

Under the law in regard to insolvents, for summoning a jury, one dollar and twelve and a half cents. (3. R. S., 111 [38].)

In proceedings relating to apprentices — to bastardy — against beggars and vagrants — against disorderly persons — against fugitives from justice — under statute relative to gaming — against hawkers and peddlers — against lunatics — against pawnbrokers — for summoning witnesses to give deposition — and for arresting persons engaged in racing. Serving a summons, twenty-five cents; arresting and committing any person pursuant to process, one dollar; serving a warrant, fifty cents; mileage, in executing or serving a summons, warrant or execution, going only, for each mile, ten cents. (Laws of 1869, ch. 820.)

In proceedings for the draining of swamps, for all services rendered therein, one dollar. (3 R. S., 864 [550].)

*In special proceedings in the city of Albany.*

For serving the summons and the copy thereof, fifty cents.

For executing the warrant or precept commanding any person to be put in possession of any land or premises, the possession of which is sought to be recovered, one dollar and fifty cents.

For all other services in special proceedings, the same fees as are provided for the same services in civil actions in said city. (3 R. S., 408; Laws of 1856, ch. 184.)

*In criminal cases.*

Serving a warrant or other process, for the arrest of any person, issued by any magistrate or court, seventy-five cents; and the same fees for travelling to make such service as are allowed for serving a warrant in civil cases (ten cents a mile, for going only.)

Taking a defendant in custody on a mittimus, twenty-five cents; conveying a person to the magistrate or court, before whom he is to be brought, twelve and a half cents, if within one mile, and for every mile more, going only, six cents; for taking a defendant into custody on a mittimus, twenty-five cents; for every mile travelled in taking the prisoner to jail, going and returning, ten cents. (Laws of 1869, ch. 820.)

Serving a subpoena, twelve and a half cents for each witness, and the like mileage as allowed for serving a warrant, but mileage shall be allowed only on the distance actually and necessarily travelled.

Whenever a subpoena for witnesses in criminal cases or complaints, containing one or more names, shall be served by a constable or other officer, such officer shall be allowed for mileage only for the distance, going and returning, actually traveled to make such service upon all the witnesses in such case of complaint, and not separate mileage for each witness unless the board of supervisors auditing accounts for such services shall deem it equitable to make a further allowance.

The board of supervisors may allow such further compensation for the service of process, and the expenses and trouble attending the same, as they shall deem reasonable.

For other services in criminal cases, for which no compensation is specially provided by law, such sum as the board of supervisors of the county shall allow. (3 R. S., 1046 [750.] )

Under the provision of the statute above referred to, which gives fees to a constable for serving a warrant, and for traveling to make such service, no fees are to be paid, unless the warrant is actually served. The rule is probably without exception, that no fees are allowed to any officer for traveling in order to serve process unless the service is actually made. This principle is entirely settled, and it is, moreover, one of sound policy. It excites to vigilance and fidelity, whereas the opposite rule would afford a strong temptation to remissness and fraud. (*Ex parte Wyles*, 1 Denio, 658.)

A constable is not entitled to fees for a mere levy without a sale, but if the sale is prevented by a settlement of the parties, he will be entitled to his fees. (See *Hildreth v. Ellice*, 1 Caines Rep., 192.) If he has levied

upon the property and returned, that it remains on his hands for want of buyers, he is not entitled to his fees. For if no persons attend the sale, it is his duty to adjourn the sale, and give notice to the plaintiff, who should attend and bid himself, and the constable should proceed and sell the first opportunity. (*Pixley v. Butts*, 2 Cow., 421.)

A constable is entitled only to the fees allowed him by the statute, and an agreement between him and the party for whom he is acting that he shall receive a greater compensation, would be a void agreement which he could not enforce, even, although, services beyond what could legally be required are rendered by the officer. (*Hatch v. Mann*, 15 Wend., 44.) But where no fees are fixed by statute, he is entitled to a reasonable sum for all services rendered by him. (See *Smith agt. Birdsell*, 9 Johns., 327.)

The compensation allowed by law to constables for attending courts of record, and reasonable compensation to other officers for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by any district attorney; and for other services in relation to criminal proceedings, for which no specific compensation is prescribed by law, is a county charge, and is to be presented to the board of supervisors to be audited and allowed by them. But before such account or claim shall be passed upon or allowed by them, the officer is to exhibit a just and true statement, in writing, of the nature of the service performed by them. In all cases in which a specific compensation for any service is not provided by law, the officer or person presenting an

account therefor shall also exhibit, in writing, a just and true statement of the time actually and necessarily devoted to the performance of such services. ( 1 R. S., 902 [385]. )

To entitle any constable or other officer to the increased or additional travel fees provided for in this act (Laws of 1869, ch. 820), such constable or officer shall show by affidavit that such travel was necessary on the process on which it was charged, that no more miles are charged for than were actually and in good faith travelled on the execution of such process; and that such constable or officer at the time had no other official or private business on such travelled route, and that the charge for going and returning was made only upon one process, which process shall be attached to or described in such affidavit; and such additional or increased travel fees shall not be allowed by any court or auditing board, unless such court or auditing board shall be satisfied that the miles charged were actually and necessarily travelled on the process named, and on that process only. (Laws of 1869, ch. 820.)

The board of supervisors act judicially in auditing and allowing accounts (*Huff v. Knapp*, 1 Sel., 67); and a mandamus will not lie to a board of supervisors, to control them in the exercise of their discretion as to the amount at which an account presented shall be audited. (*The People v. Supervisors, &c., of New York*, 1 Hill, 362.)



# APPENDIX.

---

## No. 1.

### NOTICE TO A CONSTABLE OF HIS ELECTION.

OFFICE OF TOWN CLERK,  
*Bern, April 8, 1862.*

Sir: At the annual town meeting, held in and for the town of Bern, on the 6th day of April you was duly elected one of the constables in and for said town.

Yours, &c.,                      JOHN GILES,  
*Town Clerk.*

To Thomas Brown, Esq.

---

## No. 2.

### APPOINTMENT OF A CONSTABLE BY THREE JUSTICES.

Whereas, one of the offices of constable for the town of Bern has become vacant by the death (resignation, *or*, removal from the town, *or*, removal from office) of Thomas Brown, we do hereby appoint John Brown of said town, as a constable of said town, to fill the office made vacant by the death (*or*, resignation, *or*, removal) of the said Thomas Brown, to hold his office for the balance of the term for which the said Thomas was elected (*or*, appointed), and until his successor shall be elected or appointed and qualified.

Witness our hands and seals, at the town of Bern, this 8th day of July, 1861.

N. M., [L. S.]  
 N. P., [L. S.]  
 R. S., [L. S.]

*Justices of the Peace of said Town.*

### NO. 3.

#### RESIGNATION OF A CONSTABLE.

To A. B., C. D. and E. F., Esqrs.,

Three Justices of the town of Bern :

The undersigned having been at the last annual town meeting of the town of Bern, duly elected one of the constables in and for said town, and having afterwards duly qualified and entered upon the duties of his office as such constable, is now so unwell as to be unable to attend to and fulfill the duties of said office, and it being uncertain whether he will be able so to do for many weeks to come, he hereby tenders his resignation of said office, and asks that some other person may be appointed to perform the duties of the same for the remainder of his official term.

THOMAS BROWN.

BERN, June 2, 1861.

### NO. 4.

#### NOTICE TO THE CLERK OF THE TOWN OF SUCH RESIGNATION.

To G. H., Esq.,

*Clerk of the Town of Bern :*

Take notice, that Thomas Brown has tendered to us his resignation of the office of constable in and for said town, and that we have examined in regard to the cause shown for such resignation, and being satisfied that a good and sufficient cause has been shown why such resignation should

be accepted, we have accepted the same, and hereby declare the said office of constable vacant.

Yours, &c.,                      A. B.,  
                                            C. D.,  
                                            E. F.,

*Three Justices of said Town.*

BERN, June 2, 1861.

---

**No. 5.**

COMPLAINT TO REMOVE A CONSTABLE.

To A. B., C. D. and E. F.,

Three Justices of the Town of Knox:

The undersigned hereby presents this complaint against Thomas Brown, one of the constables of the town of Knox, and hereby shows that on or about the 6th day of November, 1860, one L. M. obtained a judgment against M. L. of said town of Knox, for the sum of forty dollars damages and two dollars costs, and that execution upon such judgment was duly issued on said judgment, and delivered to the said Thomas Brown on or about the 8th day of November, 1860; that the said Thomas Brown immediately after the receipt by him of the said execution, collected the money due on the said judgment, but he has neglected to pay the proceeds or any part thereof to the plaintiff in the said judgment, or to the justice who executed the same; and that after the return day of said execution, the said L. M. commenced an action against O. P. and R. S., the sureties of the said constable, on account of the fault and delay of the said Thomas Brown in paying over the money so collected on said execution, and obtained judgment against the said sureties on or about the 6th day of June, 1861, before R. S., one of the justices of the peace of said town, wherefore your complainant demands, that on account of the faults, neglect and shortcoming of the said Thomas Brown, he be

removed from his office, in accordance with the provisions of the statute in such case made and provided.

Yours, &c.,

R. B.

BERN, July 10, 1861.

### No. 6.

#### NOTICE TO CONSTABLE TO APPEAR.

To Thomas Brown, Esq.:

Sir: Take notice that a complaint against you, and asking for your removal from the office of constable, has been laid before us, the undersigned, three of the justices of the peace of the town of Knox, of which the within (*or*, the foregoing) is a true copy, and that you are required to appear before us on the 20th day of July, 1861, at ten o'clock in the forenoon at the dwelling-house of A. B., in said town of Knox, to show cause, if any you have, why you should not be removed from the office of constable, and the same be declared vacant.

July 11, 1861.

Yours, &c.,

A. B.,  
C. D.,  
E. F.,

*Justices of the Town of Knox.*

### No. 7.

#### ORDER FOR REMOVAL OF CONSTABLE FOR NOT PAYING OVER MONEY COLLECTED BY HIM.

*County of Albany, Town of Knox*, ss. Whereas, on the 10th day of July, 1861, a complaint was duly made to us, the undersigned, three of the justices of the peace of said town, by R. B., against Thomas Brown, a constable of said town, for that an execution for forty dollars damages, and two dollars costs, in favor of L. M. against M. L. of said town of Knox, was duly issued by C. R., one of the jus-

tices of the peace of said town, on the 8th day of November, 1860, and placed in the hands of the said Thomas Brown, constable: that the said Thomas Brown has collected all (*or*, a part of) the money due on said execution; and a recovery for the money so collected was on the 6th day of June, 1861, had before the said C. R., Esqr., justice of the peace, as aforesaid, against O. P. and R. S., the sureties of the said constable, whereupon, we having duly summoned the said Thomas Brown to appear before us this day at the dwelling-house of A. B., in said town, at ten o'clock in the forenoon, to show cause why he should not be removed from his said office, as constable; and the said constable having refused or neglected to appear upon such summons (*or*, having appeared and having failed to justify under or to refute the said complaint), and the said complaint having been established to the satisfaction of said justices after hearing the party (*or*, parties): Now, therefore, by virtue of the statute in such case made and provided, and because the said Thomas Brown has neglected and refused to pay over the money collected by him, as stated in the said complaint, and a recovery therefor hath been had against his sureties, we do hereby remove the said Thomas Brown from the said office of constable.

Given under our hands this 20th day of July, 1861.

A. B.,  
C. D.,  
E. F.,

*Three Justices of said Town.*

---

**No. 8.**

CERTIFICATE OF TOWN CLERK ON COPY ORDER.

OFFICE OF TOWN CLERK,  
*Bern, July 21, 1861.*

To Thomas Brown, Esq.: .

Sir: Take notice that the within is a true copy of an

order, and of the whole of such original order, filed in the office of the Town Clerk of the town of Knox on the 20th day of July, 1861.

T. C.,  
Town Clerk of Bern.

### No. 9.

#### SECURITY OF A CONSTABLE.

We, T. B., elected (*or*, appointed) a constable in and for the town of Nassau, in the county of Rensselaer, and C. B. and R. H. of said town, do hereby, jointly and severally, agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any execution which shall be delivered to him for collection. Witness our hands this 10th day of March, 1862.

In presence of .

T. C.

T. B.

C. B.

R. H.

### No. 10.

#### APPROVAL OF SURETIES INDORSED THEREON.

I hereby approve of the form and sufficiency of the within security.

March 10, 1862.

T. C., *Town Clerk*  
(*or Supervisor*),  
of the town of Nassau.

### No. 11.

#### CONSTITUTIONAL OATH OF OFFICE.

*County of Rensselaer*, ss. I, Thomas Brown, do solemnly swear (*or*, affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the

office of constable of the town of Nassau, in said county, according to the best of my ability. T. B.

Sworn to before me, this }  
 10th day of March, 1862, }  
 E. W., *Justice of the Peace.*

### NO. 12.

NOTICE TO THE JUSTICES OF THE TOWN THAT THE CONSTABLE HAS NOT FILED HIS OATH OF OFFICE OR HIS SECURITY.

OFFICE OF THE TOWN CLERK,  
*Nassau, Feb. 15, 1862.*

To the Justices of the Peace of said town:

Take notice that on the 1st day of February, 1862, Thomas Brown was duly elected (*or*, appointed) one of the constables of said town of Nassau, and notice of such election (*or*, appointment) was duly given to the said T. B. on the 2d of Feb., 1862, of such election (*or*, appointment), and the said T. B. has not filed in the proper office his constitutional oath of office or the security required by statute.

Yours, &c., T. C., *Town Clerk.*

To A. B., &c., &c.,  
 Justices of said town.

### NO. 13.

#### SUMMONS.

*Town of Bern, Albany county, ss.* To any Constable of said county, Greeting: The People of the State of New York command you to summon C. D. to appear before me, the undersigned, one of the justices of the peace of the town aforesaid, at my office, in the town hall, in the said town, on the 31st (*or*, 27th) day of January, 1862, at nine o'clock in the forenoon, to answer A. B. in a civil action to his damage one hundred dollars or under. And have you then there

this precept. Witness my hand the 24th day of January,  
1862.

J. P.,  
*Justice of the Peace.*

---

**No. 14.**

**PROOF OF SERVICE OF SUMMONS INDORSED THEREON.**

Personally served on the within named defendant, C. D.,  
at the town of Bern, the 24th day of January, 1862.

T. B., *Constable.*

OR,

C. D.

Served on the within named defendant, by leaving a copy  
thereof at the last place of abode of the said defendant, in  
the presence of a member of the family of suitable age and  
discretion, and informed such person of its contents the 24th  
day of January, 1862.

T. B., *Constable.*

OR,

(where one of the defendants cannot be found add to  
either of the last two forms), but the defendant E. F. cannot  
be found.

---

**No. 15.**

**PROOF OF SERVICE ON A CORPORATION OR COMPANY.**

Served on the within named defendant, by giving a copy  
of the same to and leaving it with C. D., the President (*or*,  
treasurer, *or*, managing agent,) of said corporation (*or*, com-  
pany,) at the town of Knox, on the 24th day of January,  
1862.

T. B., *Constable.*

---

**No. 16.**

**PROOF OF SERVICE ON A RAILROAD CORPORATION.**

Served on the within named defendant on the 24th day

of January, 1862, at the town of Rensselaerville, by giving a copy of the same to, and leaving it with C. D., \* the person designated by the said R. R. corporation as the person on whom such process is to be served.

T. B., *Constable.*

OR,

(as in the last form to the \* and then) the freight agent of said corporation, there being no officer of said corporation within this county, and no person having been designated by said corporation as the person on whom such service is to be made.

T. B., *Constable.*

---

**No. 17.**

CIVIL WARRANT.

*Rensselaer County, Town of Nassau, ss.* To any Constable of the said county: These are, in the name of the People of the State of New York, to command you forthwith to take C. D., and personally to bring him before me, at my office in said town, to answer A. B. in a civil action, for money collected by him in a fiduciary capacity to his damage one hundred dollars or under; and do you notify the plaintiff of his arrest, and make due return hereupon, as by law required.

Dated at said town, this 24th day of January, 1862.

J. P., *Justice of the Peace.*

---

**No. 18.**

RETURN TO WARRANT INDORSED THEREON.

By virtue of the within warrant, I have taken and have in my custody the within named C. D., and I have notified the plaintiff of his arrest. March 25, 1862.

T. B., *Constable.*

OR,

by virtue of the within warrant, I have taken, and have in

my custody the within named C. D., but the within named E. F. cannot be found by me, and I have notified the plaintiff of such arrest.

T. B., *Constable.*

March 25, 1862.

---

**No. 19.**

RETURN TO WARRANT — JUSTICE ABSENT OR OUT OF OFFICE.

(Add to either of the last two forms the following :) and I took the said defendant before the said J. P., who issued the said warrant, and because the said J. P. \* was unable to try the cause, he directed me to take him before some other justice, and I now have him, by virtue of said warrant and direction.

Or,

(as in the last form to the \* and then) is no longer a justice of the peace, his term of office having expired, and now have the said defendant by virtue of the said warrant and of the statute in such case made and provided.

T. B., *Constable.*

March 30, 1862.

---

**No. 20.**

ATTACHMENT.

*County of Albany, Town of Bethlehem, ss.* To any Constable of the said county, Greeting: Whereas, A. B. has made application to the undersigned, on oath, in writing, for an attachment against the property of C. D., stating that the said C. D. is indebted to the said A. B. in the sum of \$40 over and above all discounts, which debt arose on contract (or, upon a judgment); and that the said C. D. is about to depart from the said county, with intent to defraud his creditors, therefore the People of the State of New York command you that you attach so much of the goods and chattels of the said C. D., as will be sufficient to satisfy the

said claim, and safely keep the same, to satisfy any judgment that may be recovered on this attachment; and that you make return of your proceedings therein to the undersigned, justice of the peace, of said county, on the 4th day of June (*or*, 31st day of May), 1862, at ten o'clock in the forenoon, at his office in said town. Dated the 28th day of May, 1862.

J. P., *Justice.*

---

**No. 21.**

INVENTORY OF GOODS ATTACHED.

By virtue of the within attachment, I have this day attached and taken into my possession and custody, the following goods and chattels, to wit: . . . (*or*, the goods and chattels specified in the annexed inventory).

T. B., *Constable.*

Dated May 29, 1862.

---

**No. 22.**

CERTIFICATE ON COPY ATTACHMENT AND INVENTORY.

I hereby certify that the foregoing is a true copy of the attachment, and of the whole of the attachment, issued by J. P., Esq., a justice of the peace, and by virtue of which I have taken into my possession the goods and chattels, of which the foregoing is a copy of the inventory as made by me.

T. B., *Constable.*

BETHLEHEM, May 29, 1862.

---

**No. 23.**

RECEIPT FOR PROPERTY ATTACHED.

This is to certify that I have this day received from T. B., Constable, the following goods and chattels, to wit: (here

insert a list of the goods) which said goods and chattels were taken by the said constable, by virtue of an attachment issued by one J. P., a justice of the peace, in an action in which A. B. is plaintiff and C. D. is defendant, and which was commenced to recover the sum of forty dollars, and I hereby agree to return the said property, and every part thereof, to the said constable on his demand of the same, or to pay the said debt, together with the costs in said action, and the fees of the said constable in said action.

R. C. P.

COLUMBUS, March 11, 1862.

---

**No. 24.**

**BOND OF DEFENDANT TO PREVENT REMOVAL OF GOODS ATTACHED.**

Know all men by these presents: That we, C. D. and R. R. are held and firmly bound unto T. B., constable, in the sum of one hundred dollars (double the sum stated in the attachment), to be paid to him, his executors, administrators or assigns, to which payment, well and truly to be made, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 11th day of March, 1862.

Whereas, T. B., one of the constables of the town of Columbus, in the county of Chenango, by virtue of a certain attachment issued by J. P., Esq., one of the justices of the peace of said town, on the application, and in favor of A. B., against the goods and chattels of the above bounden C. D., has attached the following goods and chattels of the said C. D., to wit: (here insert names of the articles) (or, a list of which said goods and chattels is hereto annexed.)

Now, therefore, the condition of this obligation is such, that if the said goods and chattels shall be produced to satisfy any execution that may be issued upon any judgment which

shall be obtained by the said A. B., upon the said attachment, within six months after the date of this bond, then this obligation to be void, otherwise of force.

C. D. [L. s.]  
R. R. [L. s.]

---

**No. 25.**

**BOND TO BE GIVEN BY THE CLAIMANT OF THE GOODS ATTACHED.**

Know all men by these presents: That we, D. S., R. R. and P. P., are held and firmly bound unto A. B., in the sum of one hundred and fifty dollars (double the value of the property attached), to be paid to him, his executors, administrators or assigns; to which payment well and truly to be made, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this March 11, 1862.

Whereas, certain goods (insert list, or, a list of which is hereto annexed) were, on the 10th day of March, 1862, seized by T. B., constable, by virtue of an attachment issued by J. P., Esq., one of the justices of the peace of the county of Albany, in favor of the above named A. B., against C. D. And, whereas, the said D. S. claims the said goods as his property.

Now, therefore, the condition of this obligation is such, that if, in a suit to be brought on this obligation within three months from the date hereof, the said D. S. shall establish that he was the owner of the said goods at the time of the said seizure; and in case of his failure to do so, if the said D. S. shall pay to the said A. B. the value of the said goods with interest, then this obligation to be void, otherwise to remain in full force and virtue.

D. S. [L. s.]  
R. R. [L. s.]  
P. P. [L. s.]

**No. 26.**

## QUALIFICATION OF SURETY INDORSED ON BOND.

*Albany County*, ss. R. R., being duly sworn, says, that he is a resident and freeholder (*or*, householder) within said county, and is worth the sum of one hundred dollars, over and above all just debts and liabilities.

R. R.

Sworn before me this }  
 March 11, 1862, }

T. B., *Constable*.**No. 27.**

## APPROVAL OF BOND.

I hereby approve of ~~the~~ form and sufficiency of the within security. March 11, 1862.

T. B., *Constable*.**No. 28.**

## RETURN TO ATTACHMENT — DEFENDANT FOUND.

By virtue of the within attachment, I did, on the 5th day of March, 1862, attach and take into my custody the following goods and chattels of the defendant, to wit: (specify the articles, *or*, the goods and chattels of the defendant specified in the annexed inventory,)

And I did immediately make an inventory of the property attached,\* and served a copy of the attachment and of the said inventory, by me certified, on the said defendant personally.

T. B., *Constable*.**No. 29.**

## RETURN TO ATTACHMENT — DEFENDANT NOT FOUND.

(*As in the last form to the \* and then*) and because the

said defendant could not be found in said county, I left a copy of this attachment and of the said inventory, by me certified, at the last place of residence of the said defendant (*or*, if the defendant has no place of residence in the county, then) with J. B., in whose possession I found the said goods and chattels, the said defendant having no place of residence, and cannot be found within this county.

T. B., *Constable*.

March 11, 1862.

(If the defendant or a claimant gives a bond to prevent the removal of the goods, then add to either of the last two forms the following :) But the said goods and chattels were delivered up to C. D., the defendant (*or*, claimant), upon receiving the bond herewith returned.

---

**No. 30.**

AFFIDAVIT ON CLAIM OF DELIVERY OF PERSONAL PROPERTY.

ALBANY JUSTICES' COURT.

|                               |   |                                |
|-------------------------------|---|--------------------------------|
| A. B.<br><i>agt.</i><br>C. D. | } | Before J. P., <i>Justice</i> . |
|-------------------------------|---|--------------------------------|

*County of Albany*, ss. A. B., the plaintiff in this action, being duly sworn, says, that he is the owner of the following personal property, claimed in this action (describe it). That the said property is wrongfully detained from the plaintiff by C. D., the defendant herein. That the alleged cause of the detention thereof, according to this deponent's best knowledge, information and belief, is as follows: That the said C. D. claims to own said property, alleging that he bought the same of some person, to this deponent unknown; that the said property has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff,

and that the actual value of said property, according to the best knowledge and belief of this deponent, is forty-five dollars.

Sworn, &c.

A. B.

---

**No. 31.**

INDORSEMENT ON THE AFFIDAVIT BY THE JUSTICE.

To any of the constables of Albany county: You are hereby required to take the property described herein from the defendant, and keep the same to be disposed of according to law.

J. P., *Justice.*

---

**No. 32.**

UNDERTAKING ON CLAIM OF DELIVERY OF PERSONAL PROPERTY.

(Title.)

Whereas, the above named plaintiff has commenced (*or*, is about to commence) an action against the above named defendant for the recovery of certain personal property mentioned and described in the affidavit of A. B., made for such purpose.

Now, therefore, we, A. B., of Bern, and G. H., of Westerlo, and E. S., of Bern, all in Albany county, do acknowledge ourselves bound in the sum of \$100 for the prosecution of the said action; for a return of the said property to the defendant if return thereof be adjudged; and for the payment to the defendant of such sum as may for any cause be recovered against the plaintiff in this action.

A. B.  
G. H.  
E. S.

**No. 33.**

## ACKNOWLEDGMENT INDORSED.

*Albany County*, ss. I certify that on this 12th day of March, 1862, before me came A. B., G. H. and E. S., to me personally known to be the persons described in and who executed the foregoing undertaking, and severally acknowledged the execution thereof.

J. P., *Justice of the Peace.*

---

**No. 34.**

## QUALIFICATION OF SURETY INDORSED.

*Albany County*, ss. G. H. and E. S., being severally duly sworn by me, each for himself, depose and says, and first the said G. H., says he is a householder (*or*, freeholder), residing in said county and is worth \$100, over and above all debts and responsibilities he owes or has incurred; and the said E. S., says he is a householder (*or*, freeholder), and resides in said county and is worth \$100, over and above all debts and responsibilities he owes or has incurred.

Sworn, &c.

G. H.  
E. S.

---

**No. 35.**

## SUMMONS IN REPLEVIN, OR FOR DELIVERY OF PERSONAL PROPERTY.

*Town of Bern, Albany County*, ss. To any Constable of said county, Greeting: The People of the State of New York command you to summon C. D., defendant, to appear before me, the undersigned, one of the justices of the peace of the town aforesaid, at my office in said town on the 12th day of March, 1862. at nine o'clock in the forenoon, to answer A. B., plaintiff, in a civil action to his damage, one

hundred dollars, or under; and if said C. D. shall fail to appear on the return day of this summons, the said A. B., plaintiff, will have judgment for the possession of the property described in the affidavit herewith served with his cost and disbursements in this action. And have you then there this precept. Witness my hand, this March 5, 1862.

J. P., *Justice of the Peace.*

---

**No. 36.**

RETURN TO SUMMONS — DEFENDANT FOUND.

Personally served the within summons and the accompanying affidavit and notice, and undertaking on the within defendant, C. D., at the town of Bern, March 5, 1862, and I have taken into my possession the property described in said affidavit.

T. B., *Constable.*

---

**No. 37.**

RETURN TO SUMMONS — DEFENDANT NOT FOUND.

Served the within summons and the annexed affidavit and notice, and undertaking on the within defendant, C. D., at the town of Bern, March 5, 1862, by giving copies thereof to, and leaving the same with A. G., the agent of the said defendant, in whose possession said property was found by me, (*or, by leaving said copies at the usual place of abode of the defendant with some person of suitable age and discretion, the said C. D. being absent from the county,*) and I have taken into my possession the property described in said affidavit.

T. B., *Constable.*

**No. 38.**

## NOTICE EXCEPTING TO SURETIES.

(Title.)

Take notice, that the defendant herein excepts to the surety in the plaintiff's bond or undertaking in the above mentioned action.

To A. B., Esq., Plaintiff.

Yours, &amp;c.,

BERN, March 7, 1862.

C. D., *Defendant.***No. 39.**

## UNDERTAKING OF DEFENDANT FOR RETURN OF THE PROPERTY.

(Title.)

Whereas, the above named defendant has required (*or*. is about to require) the return to him of the personal property, taken by T. B., one of the constables of said county, to wit: (describe property) being certain personal property mentioned and described in the affidavit of A. B., made in this action. Now, therefore, we, C. D., of the town of Bern, and P. P., of the same place, do acknowledge ourselves bound in the sum of one hundred dollars for the delivery of the said property to the plaintiff, if delivery thereof be adjudged, and for the payment to the plaintiff of such sum as may for any cause be recovered against the defendant in this action.

BERN, March 10, 1862.

C. D.  
P. P.**No. 40.**

## AFFIDAVIT OF THIRD PARTY CLAIMING PROPERTY.

*County of Albany*, ss. R. O., being sworn, says, that he is the owner and entitled to the possession of the following property: (describe it) taken by T. B., one of the constables

of the town of Bern, by virtue of certain proceedings in an action, in which A. B. is plaintiff and C. D. is defendant; that this deponent purchased the said property of one R. R., sometime in the summer of 1860, and has continued to own said property ever since, and hereby demands that said property be delivered to this deponent.

Sworn, &c.

R. O.

#### No. 41.

##### NOTICE TO PLAINTIFF OF DEMAND OF THIRD PARTY INDORSED ON AFFIDAVIT.

To A. B., Esq.:

Sir—Take notice of the within affidavit and demand which was served on me this March 8, 1862, and unless you furnish the indemnity prescribed by the statute, I shall deliver said property to the said R. O.

Yours, &c.,

BERN, March 9, 1862.

T. B., *Constable.*

#### No. 42.

##### UNDERTAKING INDEMNIFYING CONSTABLE.

(Title.)

Whereas, the above named plaintiff has commenced an action against the above named defendant for the recovery of certain personal property mentioned and described in the affidavit made for such purpose, which said property, or a part thereof, T. B., one of the constables of the town of Bern, has taken into his possession, and one R. O. claims that he owns and is entitled to the possession of such property, and has made an affidavit of his title thereto, and right to the possession thereof, and served the same upon the constable:

Now therefore, we, A. B., B. B. and C. B., of the town

of Bern, do acknowledge ourselves bound in the sum of one hundred dollars, to indemnify and save harmless the said T. B., constable, from such claim and demand made by the said R. O.

A. B.  
B. B.  
C. B.

(Add acknowledgment and qualification of sureties that they are worth double the value of the property, and are freeholders *and* householders.

---

**No. 43.**

JUSTICES' COURT SUBPŒNA.

*Albany County*, ss. To M. N., O. P. and R. S., Greeting: In the name of the People of the State of New York, you are commanded to appear before me, the undersigned, a justice of the peace of said county, at my office in the town of Bern, in the said county, on the 12th day of March, 1862, at nine o'clock in the forenoon, to give evidence in a civil action then and there to be tried between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (*or*, defendant). Hereof fail not at your peril.

Given under my hand in said town, this 6th day of March, 1862.

J. P., *Justice of the Peace.*

---

**No. 44.**

AFFIDAVIT OF SERVICE OF SUBPŒNA.

*Albany County*, ss. T. B., being duly sworn, says, that on the 7th day of March, 1862, at the town of Bern in said county, he personally served the within subpœna on M. N., within named, by reading the same (*or*, stating the contents .

thereof) to him, and at the same time paying (*or*, tendering) to him the sum of 25 (*or* 13) cents.

Sworn, &c.

T. B.

---

**No. 45.**

ATTACHMENT FOR WITNESS.

*Albany County*, ss. The People of the State of New York, to any Constable of said county, Greeting: We command you to attach M. N., and bring him before the undersigned, a justice of the peace of said county, at his office in the town of Bern in said county, forthwith (*or*, on the 12th day of March, 1862, at nine o'clock in the forenoon), to testify those things which he may know, in a certain cause now pending before me between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (*or*, defendant), and also to answer all such matters as shall be objected against him, for that he, having been duly subpoenaed to attend the trial of said cause, has refused (*or*, neglected) to attend in conformity to such subpoena, and have you then there this precept.

Witness my hand, this 10th day of March, 1862,

J. P., *Justice of the Peace.*

---

**No. 46.**

VENIRE.

*State of New York, Albany County, Town of Bern*, ss. To any Constable of said County, Greeting: The People of the State of New York, command you to summon twelve good and lawful men, in the town of Bern, in said county, qualified to serve as jurors, and not exempt from serving on juries in courts of record, and who are in no wise of kin to either party, nor interested in the suit hereinafter mentioned,

to appear before me, one of the justices of the peace of said county, at my office in the town of Bern in said county, on the 12th day of March, 1862, at nine o'clock in the forenoon, to make a jury for the trial of a civil action between A. B., plaintiff, and C. D., defendant; and you are also required to make a list of the persons summoned, which you will certify and annex to this venire, and make return thereof to me.

Given under my hand, this 5th day of March, 1862.

J. P., *Justice of the Peace.*

---

**No. 47.**

RETURN TO THE VENIRE.

By virtue of the within precept, I have personally summoned as jurors the several persons named in the annexed list.

March 12, 1862.

T. B., *Constable.*

Names of jurors,

C. C.

D. D.

&c., &c.

---

**No. 48.**

OATH OF CONSTABLE TO KEEP JURY ON ADJOURNMENT.

You shall retire with such jurors as have leave of absence from this court: you shall not speak to them yourself in relation to this trial, nor suffer any person to speak to them; and you shall return them without delay. So help you God.

**No. 49.**

## CONSTABLE'S OATH ON RETIRING WITH JURORS.

You swear, in the presence of Almighty God, that you, to the utmost of your ability, will keep the persons, sworn as jurors on this trial, together in some convenient place, without any meat or drink, except such as shall be ordered by me; that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by my order, or to ask them whether they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations, in the verdict they have agreed on.

---

**No. 50.**

## EXECUTION AGAINST PROPERTY.

*Albany County, Town of Bern, ss.* The People of the State of New York to any Constable in said county. Whereas, judgment has been rendered before me, the undersigned, against C. D., in favor of A. B., for forty-five dollars and five cents damages, and four dollars and five cents costs: These are therefore to command you forthwith to levy of the goods and chattels of the said C. D., (except such as are exempt by law,) the amount of said judgment, with interest from the 12th day of March, 1862, on which day judgment was rendered, till received; and bring the money before me within sixty days, to render to the said A. B., for his damages and costs.\* And make return in sixty days from the date hereof, according to law.

Dated at the said town, the 12th day of March, 1862.

|                 |         |
|-----------------|---------|
| Damages, .....  | \$45 05 |
| Costs, .....    | 4 05    |
|                 | <hr/>   |
| Judgment, ..... | \$49 10 |

J. P., *Justice of the Peace.*

---

**No. 51.**

**EXECUTION AGAINST THE BODY.**

(*As in the last form to the \* then add.*) And for want of goods and chattels thereon to levy, you are commanded to take the body of the said C. D., and convey him to the common jail of the said county, the keeper whereof is hereby commanded to receive the said C. D., and him safely keep until duly discharged according to law.

Dated at the said town, the 12th day of March, 1862.

|                 |         |
|-----------------|---------|
| Damages, .....  | \$45 05 |
| Costs, .....    | 4 05    |
|                 | <hr/>   |
| Judgment, ..... | \$49 10 |

J. P., *Justice of the Peace.*

---

**No. 52.**

**INDORSEMENT ON EXECUTION AGAINST JOINT DEBTORS, PART ONLY  
SERVED WITH PROCESS.**

Collect the within from the joint personal property of the defendant, and the sole property of C. D. because the defendant E. F. has not been served with process.

J. P., *Justice.*

**No. 53.**

## RENEWAL OF EXECUTION INDORSED THEREON.

The within execution is hereby renewed this 14th day of March, 1862.

J. P., *Justice.*

---

**No. 54.**

## RENEWAL OF EXECUTION—PART PAID—INDORSED.

The within execution is hereby renewed for \$15 with interest from this 14th day of March, 1862.

J. R., *Justice of the Peace.*

---

**No. 55.**

## INDORSEMENT BY CONSTABLE OF HIS LEVY.

By virtue of the within execution I have levied on ten sheep, &c., this March 15th, 1862.

T. B., *Constable.*

---

**No. 56**

## NOTICE OF SALE OF PROPERTY BY CONSTABLE.

By virtue of an (*or*, several) execution against C. D., issued in justice's court, I have seized and taken (describe the property) which I shall sell at public vendue, to the highest bidder, at the Town Hall, in the town of Bern, on the 22d day of March, 1862, at ten o'clock in the forenoon.

BERN, March 14, 1862.

T. B., *Constable.*

## No. 57.

## CONSTABLE'S BILL OF SALE.

## JUSTICE'S COURT.

A. B.

agt.

C. D.

Before J. P., Esq., *Justice*.

At a constable's sale at auction, on an execution issued in the above action R. B. bought 15 merino sheep at \$3—\$45.

T. B., *Constable*.

## No. 58.

## PLAINTIFF'S INDEMNITY BOND TO CONSTABLE.

Know all men by these presents: That we, A. B. and M. M. are beld and firmly bound unto T. B., one of the constables of the town of Bern, in the sum of one hundred dollars, lawful money of the United States, to be paid to the said T. B., or to his certain attorney or attorneys, executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 14th day of March, in the year one thousand eight hundred and sixty-two.

Whereas, the above bounden A. B., did obtain judgment in the justice's court before J. P., Justice in the town of Bern, against C. D., whereupon execution has been issued, directed and delivered to the said T. B. requiring him, out of the personal property of the said judgment debtor, to satisfy the judgment aforesaid. And whereas, certain personal property that appears to belong to the said C. D., is claimed by one, S. G.

Now, therefore, the condition of the above obligation is such, that if the above bounden A. B. shall well and truly

save, keep and bear harmless, and indemnify the said T. B., and all and every person and persons aiding and assisting him in the premises, of and from all harm, let, trouble, damage, liability, costs, counsel fees, expenses, suits, actions, judgments, special proceedings and executions, that shall or may at any time arise, come, accrue, happen or be brought against him, them, or any of them, as well for the levying and making sale under and by virtue of such execution, of all or any personal property, which he or they shall or may judge to belong to the said judgment debtor, as well as in lawfully entering any shop, store, building or other premises, for the taking of any such personal property, then this obligation to be void, otherwise to remain in full force and virtue.

A. B. [L. s.]

M. M. [L. s.]

Sealed and delivered in  
the presence of  
T. S. }

### No. 59.

#### JUSTIFICATION OF SURETY—INDORSED.

*County of Albany*, ss. M. M., one of the subscribers to the above bond being sworn, says, that he is a resident and freeholder (*or*, householder) within this state, and worth (double the sum specified in the above bond,) over all his debts and liabilities, and exclusive of property exempt by law from execution.

M. M.

Sworn to before me, this }  
14th day of March, 1862, }

J. P., *Justice of the Peace.*

## No. 60.

## CONSTABLE'S RETURN ON EXECUTIONS.

No property (*or*, body) of defendant to be found in this county. *Or*,

I have levied the debt (*or*, damages) and costs. *Or*,

For want of goods and chattels of the defendant, I have taken the body of the defendant and committed him to the jail of the county. *Or*,

I have levied \$20 on the within execution, and for want of further goods and chattels of the defendant, I have taken the body of the defendant and committed him to jail. *Or*,

I have levied \$15 on the within execution and no more property, nor the body of the defendant can be found. *Or*,

I have levied on one wagon and harness which remain in my hands unsold for want of buyers.

T. B., *Constable*.

---

No. 61.

## SUMMONS TO REMOVE TENANT HOLDING OVER AFTER THE EXPIRATION OF HIS TERM.

To C. D.:

Whereas, A. B. has made oath, and presented the same to me, that on or about the 12th day of March, 1861, he demised or leased unto you a certain house and lot (*describe the premises*) for the term of one year from the 13th day of March, 1861, and that you or your assigns hold over and continue in possession of the said premises after the expiration of your term therein, without the permission of the landlord: Therefore, the People of the State of New York hereby summon and require you forthwith to remove from the said premises, or show cause before me at my office in the town of Bethlehem on the 15th day of March, 1862,

at ten o'clock in the forenoon, why possession of the said premises should not be delivered to the landlord.

Witness my hand, this }

March 14, 1862, }

J. P., *Justice of the Peace.*

---

**No. 62.**

SUMMONS TO TENANT HOLDING AFTER NON-PAYMENT OF RENT.  
To C. D.:

Whereas, A. B. has made oath before me that you are justly indebted to him in the sum of fifty dollars due the 1st day of February, 1862, for rent of a house and lot belonging to the said A. B., and situate in the town of Bethlehem, in which you now reside; that he has demanded from you the said rent or possession of said premises, in due form of law; and that default has been made in the payment of rent, pursuant to the agreement under which the premises were let; and that you hold over and continue in possession of the same without the permission of the landlord, after default in the payment of the rent as aforesaid, and that satisfaction of the said rent cannot be obtained by distress of any goods. Therefore you are hereby summoned and required to remove from said premises, or show cause before me, at my office, in the town of Bethlehem, on the 14th day of March, 1862, at ten o'clock in the forenoon, why the said A. B. should not be put in full possession thereof.

Witness my hand, this }

11th day of March, 1862, }

J. P., *Justice of the Peace.*

---

**No. 63.**

PROOF OF SERVICE OF SUMMONS TO REMOVE.

*Albany County*, ss: W. S., of the town of Bethlehem,

being duly sworn, says: that on the 11th day of March, 1862, he served the annexed summons upon C. D., the tenant therein named by delivering to and leaving with him a true copy thereof, at the same time showing him the original (*or*, by leaving a copy thereof at the last or usual place of residence of the said C. D., with a person of mature age residing on the premises, the said C. D., being absent from his last or usual place of residence, *or*, there being no person of mature age residing on the premises, and the said C. D., being absent from his last or usual place of residence, by affixing a copy thereof upon a conspicuous part of the said demised premises.

Sworn, &c.

W. S.

---

**No. 64.**

**VENIRE WHEN THE TENANT MAKES A DEFENSE.**

*Albany County*, ss: To any Constable of said county, Greeting: Whereas, I, the undersigned, one of the justices of the peace of said county, in order to form a jury to try certain matters in controversy between A. B., landlord, and C. D., tenant, have, in due form, nominated E. F., &c. (naming them), twelve reputable persons, qualified to serve as jurors in courts of record:

You are, therefore, hereby commanded, in the name of the People of the State of New York, to summon the above named persons so nominated to appear before me, at my office, in the town of Bethlehem, on the 14th day of March, 1862, at ten o'clock in the forenoon, to try the said matters in difference between the said parties.

J. P., *Justice, &c.*

Dated Bethlehem, March 12, 1862.

**No. 65.****CONSTABLE'S RETURN TO THE VENIRE.**

I have personally served, in the town of Bethlehem, all the persons named for jurors in the within precept.

T. B., *Constable.*

March 13, 1862.

---

**No. 66.****WARRANT TO REMOVE—EXPIRATION OF TERM.**

To any Constable of the County of Albany, Greeting:

Whereas, A. B. has made oath in writing, and presented the same to me, that on or about the first day of February, 1861, he rented unto C. D. for the term of one year, from the first day of March then next, the following described premises (describe premises) and that he or his assigns hold over and continue in possession of the same after the expiration of his term therein, without the permission of the landlord: Whereupon I issued a summons requiring the said tenant forthwith to remove from the said premises, or show cause before me, at a certain time now past, why the possession of the said premises should not be delivered to the landlord;\* and no sufficient cause having been shown to the contrary, and I being satisfied by due proof, of the service of the said summons,\* do, therefore, in the name of the People of the State of New York, command you to remove all persons from the said premises, and put the landlord into the full possession thereof.

In witness whereof, I have subscribed these presents, this 14th day of March, in the year one thousand eight hundred and sixty-two.

J. P., *Justice, &c.*

## No. 67.

## WARRANT TO REMOVE — NON-PAYMENT OF RENT.

To any Constable of the County of Albany, Greeting:

Whereas, A. B. hath made oath in writing, and presented the same to me, that C. D., as tenant of him the said A. B., was justly indebted unto A. B. in the sum of one hundred dollars and interest, from February 1, 1862, for the rent of house and lot in the town of Bethlehem, that the said rent had been demanded from C. D., and that the said C. D. had made default in the payment thereof, pursuant to the agreement under which the premises were held, and that the said C. D. holds over and continues in possession of the same, without the permission of the landlord, after default in the payment of the rent as aforesaid. Whereupon I issued a summons, requiring the tenant, and each and every person in possession of the said premises, or claiming the possession thereof, forthwith to remove from the said premises, or show cause before me, at a certain time now past, why the possession of the said premises should not be delivered to the said landlord;\* and no good cause having been shown, or any way appearing to the contrary, and due proof of the service of such summons having been made to me,\* therefore, in the name of the People of the State of New York, you are commanded to remove all persons from the said premises, and put the said A. B. into the full possession thereof.

In witness whereof, I have subscribed these presents, this 14th day of March, in the year one thousand eight hundred and sixty-two.

J. P., *Justice, &c.*

**No. 68.****WARRANT AFTER VERDICT OF JURY AGAINST TENANT.**

*(Insert in either of the last two forms in place of the words between the \* \* the following words:)*

And whereas, the said C. D. duly and in due time filed an affidavit with me, the undersigned, who issued said summons, denying the facts (*or*, some one of the facts) upon which said summons was issued: And a jury having been regularly nominated, summoned, balloted for and sworn, in pursuance of the directions of the statute in such case made and provided, to determine the matters controverted between the said parties; and the said jury, after hearing the proofs and allegations of the parties, and being kept together by a proper officer duly sworn until they agreed on their verdict, having found a verdict in favor of said A. B.

**No. 69.****RETURN TO A WARRANT TO DISPOSSESS TENANT.**

Pursuant to the command of the within warrant, I have this day put the landlord into the full possession of the premises therein mentioned. Dated this 15th day of March, 1862.

T. B., *Constable.*

**No. 70.****PRECEPT FOR A JURY TO REASSESS DAMAGES IN LAYING OUT, ALTERING OR DISCONTINUING A HIGHWAY.**

The People of the State of New York, to any one of the constables of the town of Columbus, in the county of Chenango, Greeting: You are hereby directed to summon A. B., &c., (insert the names of all the jury,) to appear at

the town clerk's office in the town of Columbus in said county, on the 17th day of March, 1862, at ten o'clock in the forenoon, to form a jury to reassess the damages accruing by the laying out (*or*, altering, *or*, discontinuing) of a highway in the said town of Columbus, by the highway commissioners thereof, on the 17th day of January, 1862. And hereof fail not at your peril.

J. P., *Justice of the Peace.*

### NO. 71.

#### PRECEPT FOR A JURY TO INQUIRE INTO AN ENCROACHMENT.

*Town of Dover, County of Dutchess, ss.* To any Constable of said town, Greeting: You are hereby commanded, in the name of the People of the State of New York, to summon twelve freeholders of said town, to meet on the 25th day of March, 1862, at nine o'clock in the forenoon, at the office of the town clerk in the town house in said town, to inquire whether any encroachment has been made, and by whom, upon the highway in said town, leading from the house of A. B. to C. D., where it runs along the lands in the occupation of W. W. in said town. And give at least three days' notice to the commissioners of highways of said town, and to the said W. W. of the time and place at which the said freeholders are to meet. Witness my hand, this March 5, 1862.

J. P., *Justice, &c.*

### NO. 27.

#### WARRANT TO COLLECT COST OF AN INQUIRY CONCERNING AN ENCROACHMENT.

The People of the State of New York to any Constable of the town of Bethlehem, in the county of Albany, Greeting: Whereas, the commissioners of highways of the said

town did, on the 11th day of April last, make, reduce to writing, and sign, an order for the removal of a certain fence as an encroachment upon the highway, running through (*or, by*) the lands, in said town, in the occupation of W. X., (specifying the breadth of the road, and the extent and place of the encroachment, according to the statute,) which said encroachment having been denied by said occupant, a jury of twelve freeholders was, upon the application of the said commissioners, (*or, T. J., one of said commissioners,*) by a precept issued by me, duly summoned to inquire into the premises, and the said jury having been duly assembled and sworn, after due notice to the said occupant, as required by law, and having heard the proofs and allegations produced and submitted on the 25th day of July, 1861, the said jury made and subscribed a certificate in writing, that an encroachment had been made by W. X., the present (*or, former*) occupant of said land, (stating the particulars thereof.) And whereas, the costs of said inquiry amounts to the sum of ten dollars, which remains unpaid. Therefore, you are commanded to levy the said costs of the goods and chattels of the said W. X., the occupant of the said land through (*or, by*) which the said highway runs, and bring the same before me without delay.

Given under my hand and seal, this 30th day of July, in the year 1861.

J. R., [L. S.]  
*Justice of the Peace.*

### NO. 73.

#### SUMMONS FOR NOT WORKING HIGHWAYS.

*Town of Cicero, County of Onondaga, ss.* To any Constable of said town, Greeting: Whereas, complaint has been made to me, the undersigned, one of the justices of the said town, by A. B., overseer of highways for road district num-

ber two, in said town, that C. D., who resides in said district, and is assessed for highway labor in said district, and has been duly notified to perform such work, has refused and neglected to appear in pursuance of such notice, either in person or by an able-bodied substitute, and perform such labor (*or, specify any other failure to comply with the statute*). You are therefore commanded, in the name of the People of the State of New York, to summon the said C. D. forthwith to appear before me, at my office in said town, to show cause why he should not be fined according to law for such refusal (*or, neglect*), as in said complaint is alleged against him.

March 17, 1862.

J. R., *Justice, &c.*

#### NO. 74.

##### RETURN OF SERVICE OF SUMMONS.

I have duly and personally served the within summons on the within named C. D., at the town of Cicero, this March 17, 1862.

T. B., *Constable.*

OR,

I have duly served the within summons by leaving a copy thereof at the personal abode of the said C. D., in the town of Cicero, this March 17, 1862.

T. B., *Constable.*

#### NO. 75.

##### WARRANT TO COLLECT A FINE FOR NOT WORKING.

*Town of Cicero, County of Onondaga, ss.* To any Constable of said town, Greeting: Whereas, complaint was made to me, one of the justices of the peace of said town, by A. B., overseer of highways for road district number two, in said town, that C. D., &c. (as in complaint.) And,

whereas, I thereupon issued my summons, requiring the said C. D., forthwith to appear before me, at my office, in said town, to show cause why he should not be fined according to law for such refusal (*or*, neglect). And whereas, the said summons has been duly returned, served by T. B., constable, and the said C. D. has not appeared before me (*or*, having appeared) has not shown sufficient cause to the contrary, I have imposed on him a fine of two dollars for his offense, complained of as aforesaid, and ascertained and adjudged the costs of the proceedings on the complaint to be two dollars.

Now, therefore, you are hereby commanded, in the name of the People of the State of New York, to levy the said fine, together with two dollars, the costs and charges aforesaid, of the goods and chattels of the said C. D., and bring the moneys which you shall collect before me, with this warrant.

Given under my hand and seal this 17th day of March, 1862.

J. P., [L. s.]  
*Justice, &c.*

#### NO. 76.

##### WARRANT TO ARREST A VAGRANT.

*County of Washington*, ss. To any Constable of said county, Greeting: Whereas, A. B. has this day made complaint on oath, before me, the under named justice of the peace, that E. F. is now in the town of Cambridge, and is an idle person, not having visible means to maintain himself, and living without employment, and is believed to be a vagrant.

You are, therefore, hereby commanded, in the name of the People of the State of New York, forthwith to arrest the said E. F., and bring him before me at my house, in

said town of Cambridge, to answer said complaint, and to be otherwise dealt with in the premises as the law requires.

J. P., *Justice, &c.*

March 17, 1862.

**No. 77.**

**WARRANT TO COMMIT A VAGRANT.**

*County of Washington*, ss. To any Constable of said county, Greeting: Whereas, E. F. has been this day duly convicted before me, the undersigned, justice of the peace of the town of Cambridge, in said county, of being a vagrant; and inasmuch as it appeared to me that said E. F. is not a notorious offender, and is a proper subject of relief (*or*, is an improper person to be sent to the poor house), I did, upon such conviction, adjudge that said E. F. be committed, as hereinafter expressed. You are, therefore, hereby commanded, in the name of the People of the State of New York, to convey the said E. F. to the county poor house (*or*, alms house, *or*, town poor house), the keeper whereof is hereby required to keep the said E. F. therein at hard labor for the term of forty days; (*or*, to convey the said E. F. to the common jail of said county, the keeper whereof is required to detain the said E. F. in safe custody therein for the term of thirty days, and to be kept for the first ten days on bread and water only.)

Given under my hand and seal, at Cambridge, this 17th day of March, 1862.

J. P., *Justice, &c.*

**No. 78.**

**WARRANT TO COLLECT A PENALTY FROM A PEDDLER.**

*County of Delaware*, ss. To any Constable of said county, Greeting: Whereas, E. F. has been this day duly convicted before me, the undersigned, a justice of the peace of the

town of Delhi, of trading as a hawker or peddler, without license, for that purpose had and obtained, for which offense he was adjudged by me to forfeit the sum of twenty-five dollars; and whereas, the costs of his conviction were ascertained and fixed by me at four dollars, which forfeiture and costs the said E. F. has not paid: Now, therefore, you are hereby commanded, in the name of the People of the State of New York to cause the said twenty-five dollars forfeit as aforesaid, together with said four dollars costs, to be forthwith levied by distress and sale of the goods, wares and merchandise of the said E. F., and to bring the money so collected by you before me at my office, in the town of Delhi, in said county.

Witness my hand, this }  
17th day of March, 1862, }

J. P., *Justice, &c.*

#### NO. 79.

##### WARRANT TO ARREST PUTATIVE FATHER.

*County of Saratoga, ss.* To any Constable of said county, Greeting: Whereas, A. B., of the town of Charlotte, upon examination on oath before me, the under named justice of the peace of said county, this day had, did declare that C. D. is the father of the bastard child, of which she was delivered on the second instant (*or*, of the child of which she is pregnant, and which is likely to be born a bastard), and which is chargeable (*or*, likely to become chargeable) to said county; and whereas, N. M., one of the overseers of the poor of said town (*or*, one of the superintendents of the poor of said county, in order to indemnify said town (*or*, said county), in the premises has applied to me to inquire into the facts and circumstances of the case, and to issue my warrant to apprehend the said C. D.: You are, therefore hereby commanded, in the name of the People of the State of New York forthwith to apprehend the said C. D., and bring him before me at my office, in the said town of Char-

lotte, for the purpose of having an adjudication respecting the filiation of such bastard child (*or*, of such child likely to to be born a bastard.)

Witness my hand, this }

March 17, 1862, }

J. P., *Justice, &c.*

#### NO. 80.

INDORSEMENT ON WARRANT IF ARREST IS TO BE IN ANOTHER COUNTY.

Let the within named C. D. be held to bail in the sum of two hundred dollars.

March 17, 1862.

#### NO. 81.

INDORSEMENT ON WARRANT BY A JUSTICE IN A FOREIGN COUNTY.

*County of Delaware*, ss. The within warrant, with the indorsement made thereon by the justice by whom it was issued, of the sum required to be put in the bond, having been presented to the undersigned, a justice of the peace of the county of Delaware, and proof having been made of the handwriting of the justice who issued the warrant, the arrest of the said C. D. is hereby authorized, if he can be found within the county of Delaware. Indorsed at the town of Delhi, in the county of Delaware, this 18th day of March, 1862.

J. P., *Justice.*

#### NO. 82.

CERTIFICATE BY THE JUSTICE WHO TAKES THE BOND.

*Delaware County*, ss. I certify that the within named C. D. was brought before me, one of the justices of the peace of the county of Delaware, by virtue of the within warrant, and was by me discharged from arrest, upon his executing a bond pursuant to statute.

J. P., *Justice, &c.*

DELHI, March 18, 1862.

**No. 83.****RETURN TO WARRANT TO ARREST PUTATIVE FATHER.**

By virtue of the within I did arrest and take into custody the within named C. D., March 17, 1862.

T. B., *Constable.*

OR,

By virtue of the within warrant, and the several indorsements thereon, I did arrest the within named C. D., at Delhi, in the county of Delaware, and did take the said C. D., before J. P., one of the justices of the peace of said county of Delaware, and the said C. D. was then and there released upon his executing the accompanying bond.

T. B., *Constable.*

March 18, 1862.

**No. 84.****VENIRE AS TO WHETHER A PERSON IS AN HABITUAL DRUNKARD.**

*Town of Bern, Albany County, ss.* To any Constable of the said County, Greeting: The People of the State of New York command you to summon twelve good and lawful men, in the town of Bern, qualified to serve as jurors, and not exempt from serving on juries in courts of record, and who are in no wise of kin to C. D., to appear before me, one of the justices of the peace of the said town, at my office in the said town, on the twentieth day of March, 1862, at nine o'clock in the forenoon, to make a jury for trial of the fact, whether C. D. of said town is an habitual drunkard, he having been designated as such by the overseers of the poor of said town. And you are also required to make a list of the persons summoned, which you will certify and annex to this venire, and make return thereof to me.

Witness my hand, the }  
17th day of March, 1862, }

J. P., *Justice of the Peace.*

**No. 85.**

## NOTICE OF SALE ON FORECLOSURE OF CHATTEL MORTGAGE.

Take notice that by virtue of a chattel mortgage, executed by A. B. to C. D., dated December 3, 1861, and filed in the office of the town clerk in Schodack, on said 3d day of December, and upon which default in payment has been made, I shall sell the property therein mentioned and described as follows: (set forth names of the articles), at public auction to the highest bidder, at the town house in said town, on the 25th day of March, 1862, at 12 o'clock noon.

C. D., *Mortgagee.*

March 15, 1862.

by T. B., *Constable.*

**No. 86.**WARRANT TO SEARCH FOR BOOKS AND PAPERS ON THE CANAL,  
AND TO PUT PARTY IN POSSESSION.

*County of Albany, Town of Watervliet, ss.* Whereas, complaint, on oath, has been made to me, one of the justices of the peace of said town, by A. B., who has been appointed lock-tender on lock No. 5, on the Erie canal, in said town, that C. D., who was last year the lock-tender of said canal lock, holds over and continues in possession of the office and books and papers, and matters or things, belonging to the canal in connection with said lock, and refuses to admit the said A. B. into the possession of the said lock, office and premises, and to the possession of the books and papers to which he is entitled to possession by virtue of the said appointment; and it appearing to me that the proper notice, signed by M. M., the acting canal commissioner has been served upon the said C. D., requiring him to surrender the possession of the said premises, &c., which requisition the said C. D. refuses to obey. You are, therefore, hereby commanded, in the name of the People of the State of New

York, forthwith, in the daytime, with such assistance as may be necessary, to enter upon the premises so occupied, and remove therefrom all persons found in possession thereof, and to take into your possession and custody all books, papers, matters and things there found belonging to the canals, and to deliver the same to M. M., the acting canal commissioner, or his authorized agent, and return to me the manner in which you have executed this precept.

Witness my hand and seal, {  
 this 10th day of April, 1861, {  
                                           J. P., [L. s.]

*Justice, &c.*

### NO. 87.

#### RETURN TO ABOVE WARRANT.

By virtue of the within precept, I this day entered upon the premises therein referred to, removed therefrom all persons found in possession, took into my custody all the books, papers, matters and things belonging to the canal, and delivered the same to R. R. the authorized agent of the said M. M., the acting canal commissioner. April 12th, 1861.

T. B., *Constable.*

### NO. 88.

#### RETURN TO SUPERVISOR'S SUMMONS.

Personally served, by reading the within to said D. D. therein named, and at the same time giving him a copy of the within summons, at the town of Schodack, this March 18, 1862.

T. B., *Constable.*

## No. 89.

## ASSAULT AND BATTERY WARRANT.

*Rensselaer County, Town of Schodack*, ss. To any Constable of said county, Greeting: Whereas, complaint has this day been made before me, J. P., one of the justices of the peace in and for said county, by A. B., that one C. D., on the 16th day of March, 1862, at the town of Schodack in said county, with force and arms did grievously assault and beat the said A. B., and having examined the said complaint on oath touching the said offense and accusation, and it appearing to me from such examination, that such offense has been committed, you are therefore hereby commanded, in the name of the People of the State of New York, forthwith to apprehend the said C. D., and bring him before the said justice, to be dealt with according to law.

Witness my hand at Schodack, in said county, this 17th day of March, 1862,

J. P., *Justice of the Peace.*

## No. 90.

## CRIMINAL WARRANT.

*Rensselaer County, Town of Nassau*, ss. To the Sheriff or any Constable of said county, Greeting: Whereas, complaint on the oath of A. B., has been made before the undersigned, justice of the peace of said town, that on the 17th day of March, 1860, at Nassau, in said county against C. D. that he (insert the crime charged.)

These are, therefore, in the name of the People of the State of New York, to command you forthwith to take the said C. D., and to bring him before me, at my office in said town, to answer unto the matters contained in said complaint, and to be further dealt with according to law. Dated at said town, the 17th of March, 1862.

J. P., *Justice of the Peace.*

**No. 91.**

## RETURN TO WARRANT.

By virtue of the within warrant, I have taken and have in my custody, the within described C. D., March 18th, 1862.

T. B., *Constable.*

**No. 92.**

## RETURN TO WARRANT—PART NOT FOUND.

By virtue of the within warrant, I have taken and have in my custody the within named C. D., but the within named E. F., cannot be found. March 18th, 1862.

T. B., *Constable.*

**No. 93.**

## RETURN TO WARRANT—JUSTICE ABSENT.

(*Add to either of the last two the following:*) And I brought the said C. D., to the office of the said J. P., the magistrate who issued the within warrant, and before whom it was made returnable; but the said J. P. was then absent therefrom and could not be found to proceed upon the said warrant, (*or, was sick and unable to proceed thereon, or, had ceased to be a magistrate, the term of office for which he was elected having expired; or, the said J. P. had resigned, or, removed from the county.*)

T. B., *Constable.*

**No. 94.**RETURN OF CONSTABLE TO COUNTY CLERK, WHERE BAIL IS TAKEN  
IN ANOTHER COUNTY.

By virtue of the within warrant and the indorsement thereon, I arrested the within named C. D., in the county of

Delaware, and took him before J. P., the county judge of the said county of Delaware, who admitted the said C. D. to bail, the recognizance which was then taken and approved by said judge, being herewith returned.

T. B., *Constable.*

To S. C., clerk of the county of Schenectady.

### No. 95.

#### COMMITMENT FOR FURTHER EXAMINATION.

*Rensselaer County, Town of Lansingburgh*, ss. To the Keeper of the common jail of the said county, Greeting: You will receive and safely keep in your custody, for further examination, C. D., who is charged before me, a justice of the peace of said county, upon the oath of A. B., with (insert the charge.)

Dated March 18th, 1862.

J. P., *Justice of the Peace.*

### No. 96.

#### COMMITMENT TO FINAL BAIL, OR TO BE TRIED BY SPECIAL SESSIONS.

*County of Rensselaer*, ss. To any Constable of the said county, and to the Keeper of the common jail of said county, Greeting:

Whereas, C. D. has this day been brought before me, J. P., one of the justices of the peace of the said county, charged, on the oath of A. B., with (insert the offense), and the said C. D. having been examined by me, and required to give bail, and having neglected so to do (or, the said C. D. having demanded that he be tried by a court of Special Sessions), you are, therefore, commanded, in the name of the People of the State of New York, forthwith to convey the said C. D. and commit him to the custody of

the keeper of the common jail of said county, and you the said keeper are to receive the said C. D. into your custody in the said jail, and him there safely keep, until he shall be required to be brought before a Court of Special Sessions for trial, or he be otherwise discharged according to law.

Witness my hand and }  
seal, this March 17, 1862, }

J. P., *Justice, &c.* [L. s.]

### NO. 97.

#### WARRANT TO BRING UP PRISONER FOR TRIAL.

*Albany County*, ss. To any Constable of said county, and to the Keeper of the common jail of said county, Greeting: You are hereby commanded to bring forthwith before me, the undersigned, a justice of the peace of said county, at my office, where I am now holding a Court of Special Sessions, in the town of Watervliet, C. D., in your custody and detained in said jail by virtue of a commitment by me signed, and bearing date March 17, 1862, to the end that he may be tried for the offense charged against him.

Given under my hand, this March 18, 1862.

J. P., *Justice, &c.*

### NO. 98.

#### VENIRE FOR SPECIAL SESSIONS.

*State of New York. Albany County*, ss. To any Constable of the said county, Greeting: You are hereby commanded, in the name of the People of the State of New York, to summon twelve good and lawful men of the town of Watervliet, qualified to serve as jurors, and not exempt from such service by law; and who shall be in no wise of kin either to A. B., the complainant or C. D., defendant, to be and appear before me the under named jus-

tice of the peace of said county, forming a Court of Special Sessions, on the 18th day of March, 1862, at nine o'clock in the forenoon, at my office in said town, in said county, to make a jury for the trial of an issue of traverse, between the said people and the said C. D., for the alleged offense of (state offense charged,) and have you then and there a list of the jurors you shall so summon, and this precept.

Given under my hand, the 17th day of March, 1862.

J. P., *Justice of the Peace.*

### NO. 99.

#### RETURN TO THE VENIRE.

By virtue of the within precept, I have personally summoned, as jurors, the following named persons (insert names).

T. B., *Constable.*

March 18, 1862.

### NO. 100.

#### SUBPÆNA FOR SPECIAL SESSIONS.

*State of New York, Albany County*, ss. To G. H. and J. K., Greeting: In the name of the People of the State of New York, you are hereby commanded to appear before the undersigned, now holding a court of special sessions, at his office, in the town of Watervliet, in said county, on the 18th day of March, 1862, at nine o'clock in the forenoon (*or, forthwith,*) to give evidence in a certain matter between the People of the State of New York, and C. D., on the part of the said C. D. (*or, of the People*). Hereof fail not at your peril.

Witness my hand, this {  
17th day of March, 1862, {

J. P., *Justice of the Peace.*

**No. 101.**

## RETURN TO SERVICE OF SUBPENA.

Personally served by reading the same to the within named G. H., at Watervliet, this March 17, 1862.

T. B., *Constable.*

**No. 102.**

## WARRANT OF COMMITMENT ON CONVICTION, BY SPECIAL SESSIONS.

*Albany County, Town of Watervliet, ss.* To any Constable of said county, and to the Keeper of the penitentiary of said county, Greeting: Whereas, at a court of special sessions of the peace, held this day in the town of Watervliet, in the county aforesaid, before the undersigned, one of the justices of the peace of the town of Watervliet, for the trial of C. D., charged on the oath of A. B., before the undersigned, with the alleged offense of (state what), at the town of Watervliet, in said county, and the said C. D. was duly convicted of the said offense. And whereas, upon such conviction, the said court did adjudge and determine that the said C. D. should be confined at hard labor for the space of six months in said penitentiary.

These are therefore to command you, the said constable, forthwith to convey and deliver the said C. D. to the said keeper. And you, the said keeper, are hereby commanded to receive the said C. D. into your custody, in the said penitentiary, and him there safely keep until the expiration of the said term, or he be thence discharged in due course of law.

Given under my hand, at the said town of Watervliet, this 18th day of March, 1862.

J. P., *Justice of the Peace.*

## No. 103.

## CRIMINAL SUBPŒNA.

*State of New York, Albany County, ss.* To G. H. and T. D., Greeting: In the name of the People of the State of New York, you are hereby commanded to appear before the undersigned, at his office, in the town of Watervliet, in said county, on the 18th day of March, 1862, at nine o'clock in the forenoon, (or, forthwith,) to give evidence in a certain matter between the People of the State of New York, and C. D. on the part of the said C. D., (or, of the People). Hereof fail not at your peril.

Witness my hand, this }  
 17th day of March, 1862, }

J. P., *Justice of the Peace.*

## No. 104.

## SEARCH WARRANT.

*State of New York, Rensselaer County, ss.* To any Constable of the town of Nassau, in the County aforesaid, Greeting: Whereas, complaint on oath has been made to me, one of the justices of the peace of the said county, by A. B., of Greenbush, in the county aforesaid, that certain personal property, viz.: (describe the articles) has lately been stolen or embezzled out of the dwelling-house of the said A. B., in Greenbush, in the said county, by some person or persons to him unknown, and that he suspects that the said property is concealed in the (state what building), in the town of Nassau, in the said county:

Therefore, the People of the State of New York, command you to search the place where the said property is suspected to be concealed, in the daytime, and that you bring the same before me.

Given under my hand, the 18th day of March, 1862.

J. P., *Justice of the Peace.*

**No. 105.****RETURN TO SEARCH WARRANT.**

By virtue of the within precept, I entered the premises therein described and seized, and took into my possession all of the property therein described, (*or*, the following property,) (describe it,) but the rest of said property could not be found.

March 20, 1862.

T. B., *Constable*.

**No. 106.****WARRANT FOR GRAND OR PETIT LARCENY.**

*County of Greene*, ss. To any Constable of the said county, Greeting: Whereas, A. B. has made complaint, upon oath, before me, the undersigned, one of the justices of the peace of said county, that, on the 18th day of March, 1862, certain personal property belonging to the said A. B., described as follows: (insert description) of the value of twelve (*or*, sixty) dollars or upwards was feloniously taken and stolen from his barn or dwelling-house, in the town of Athens, in said county; and he suspects that C. D. stole and feloniously took the said property.

These are, therefore, (and, as in No. 90 to the end.)

**No. 107.****INDORSING A WARRANT IN ANOTHER COUNTY.**

*Columbia County*, ss. Proof upon oath (*or*, affirmation) having been made before me, P. J., one of the justices of the peace, in and for the said county of Columbia, that the name of J. P. purporting to be subscribed to the within precept, is the handwriting of the said J. P., a justice of the peace, of the county of Albany, as within mentioned, I hereby authorize T. B. who brings this warrant to me, or any other

officer to whom the same is directed, to execute the same within the county of Columbia.

P. J., *Justice, &c.*

March 19, 1862.

### NO. 108.

#### PEACE WARRANT.

*County of Ulautauqua, Town of Westfield, ss.* To any Constable of said county, Greeting: Whereas, A. B., this day made complaint upon oath, (*or*, affirmation) before me, the undersigned, one of the justices of the peace of said town, that C. D. did, on the 19th day of March, 1862, threaten to beat and wound (or kill) him, the said A. B. and the said A. B. has asked surety of the peace: Therefore, you are hereby commanded in the name of the People of the State of New York, forthwith to apprehend the said C. D. and bring him before me, at my office, in said town of Westfield, to be dealt with according to law.

Given under my hand, this 20th day of March, 1862.

J. P., *Justice, &c.*

### NO. 109.

#### WARRANT TO ARREST A DISORDERLY PERSON.

*Albany County, ss.* To any Constable of said county, Greeting: Whereas, a complaint has this day been made under oath before me, one of the justices of the peace of said county, that C. D., of the town of Bern in said county, is a disorderly person, within the intent and meaning of the statute in such case made and provided, for that (here insert charge): These are, therefore, in the name of the People of the State of New York, to command you forthwith to apprehend the said C. D., and bring him before me, at my

office in the town of Bern, for examination as a disorderly person.

Witness my hand, }  
this March 20, 1862, }

J. P., *Justice, &c.*

### NO. 110.

#### WARRANT TO COMMIT A DISORDERLY PERSON.

*County of Herkimer*, ss. To any Constable of said county, and to the Keeper of the common jail of said county, Greeting: Whereas, C. D., was this day convicted, before me, the undersigned, one of the justices of the peace for said county, of being a disorderly person: And, whereas, I did require the said C. D., upon such conviction, to enter into a recognizance, with two sufficient sureties, severally in the sum of five hundred dollars, for the good behavior of the said C. D. for the space of one year: And, whereas, the said C. D. has neglected and failed to find such sureties and to enter into such recognizance as was by me required, and a record of the conviction of the said C. D. having been made up and signed and filed by me in the county clerk's office of said county: You, the said constable, are hereby commanded forthwith to convey and deliver the said C. D. into the custody of the keeper of said jail; and you, the keeper of the said jail, are hereby required to receive the said C. D. into your custody in the said jail and him safely keep therein until he shall find the proper sureties, or be discharged according to law.

Witness my hand, }  
this March 21, 1862, }

J. P., *Justice, &c.*

**No. 111.**

WARRANT TO SEIZE GOODS FORFEITED BY TRADING ON SUNDAY.

*County of Rensselaer, Town of Hoosick, ss.* To any Constable of said county, Greeting: Whereas, C. D. has been this day duly convicted before me, one of the justices of the peace of said county, of exposing for sale, and offering to sell on the first day of the week, called Sunday, the following goods, wares and merchandise (name them), contrary to the provisions of the statute in such case made and provided: And, whereas, it was also adjudged by me that the said C. D. had forfeited to the use of the poor, the above mentioned articles so exposed for sale, and the cost of the proceeding herein having been fixed by me at three dollars, and a record of such conviction having been made up and signed by me: You are hereby commanded and required to seize and take into your possession each and all of the said articles so exposed for sale, and to sell the same at public auction, after having given notice of the time and place of such sale, and bring the money arising from such sale before me at my office in said town, without delay.

Given under my hand, this March 21, 1862.

J. P., *Justice, &c.*

**No. 112.**

RETURN TO ATTACHMENT AGAINST A WITNESS.

By virtue of the within writ, I have arrested the within named A. B., as I am within commanded, and have him now here before the court.

R. M., *Constable.*

Dated May 3, 1862.

## No. 113.

SUMMONS TO A CONSTABLE TO ATTEND A COURT OF RECORD.

OFFICE OF SHERIFF OF ALBANY COUNTY.

To E. P., Esq.,

*Constable of the Town of Bern:*

Take notice that you are hereby summoned to attend, as a constable, the sitting of the Circuit Court (*or*, Court of Oyer and Terminer), to be held at the City Hall, in the city of Albany, to commence on the 19th day of May, 1862, at ten o'clock in the forenoon.

B. P., *Sheriff.*

ALBANY, May 3, 1862.

## No. 114.

CERTIFICATE OF ATTENDANCE OF CONSTABLES.

SUPREME COURT, CLERK'S OFFICE,  
*Albany County.*

I hereby certify that the following named persons have attended the sittings of the Circuit Court (*or*, Court of Oyer and Terminer) held in and for said county, in the City Hall, in the city of Albany, on the days herein specified.

A. B. on the 3d, 4th, 5th, 6th, &amp;c., of March.

C. D. on the 3d, 4th, 5th, 6th, &amp;c., of March.

S. A. W., *Albany County Clerk.*

ALBANY, May 3, 1862.

# INDEX.

---

|                                                          | PAGE.    |
|----------------------------------------------------------|----------|
| ACTIONS in justices' courts commenced, how,.....         | 32       |
| AFFIDAVIT for recovery of personal property, what,.....  | 56       |
| Indorsement on,.....                                     | 57       |
| AFFIDAVIT in replevin—form, .....                        | 175      |
| Form of indorsement on,.....                             | 176      |
| AFFRAY, persons in, arrested without warrant,.....       | 124      |
| Duty of constable in,.....                               | 127      |
| AGENT, may be served with summons, when,.....            | 34       |
| ALBANY CITY, constables in, how elected and appointed,.. | 16       |
| AMBASSADORS privileged from arrest,.....                 | 45       |
| AMENDMENT to bond on appeal,.....                        | 94       |
| APPEAL stays execution, when,.....                       | 94       |
| APPOINTMENT of constables, form of, by justices,.....    | 161      |
| ARREST, how made in civil actions,.....                  | 38       |
| Who privileged from, in civil actions,.....              | 41-45    |
| Constable privileged from,.....                          | 26       |
| How made and what is,.....                               | 132      |
| May break open doors to, when,.....                      | 133      |
| What force may be used on,.....                          | 134      |
| After arrest, prisoner taken, when,.....                 | 135, 136 |
| On execution, when,.....                                 | 85       |
| ASSAULT and battery, form of warrant,.....               | 204      |
| ASSAULT, person committing, arrested without warrant,... | 126      |
| Duty of constable in,.....                               | 128      |
| ATTACHMENTS, kinds of, in justices' courts,.....         | 48       |
| Executed, when and how,.....                             | 49       |

|                                                           | PAGE. |
|-----------------------------------------------------------|-------|
| ATTACHMENTS, what to be done with goods under, .....      | 50    |
| Form of, .....                                            | 170   |
| Certificate on copy, .....                                | 171   |
| Receipt for property, .....                               | 171   |
| Return to, .....                                          | 174   |
| For witness, form, .....                                  | 182   |
| Of witness, form of return to, .....                      | 214   |
| Against witness, issue when, .....                        | 63    |
| Costs in, against a witness, .....                        | 64    |
| ATTACHED property only, sold on execution, when, .....    | 83    |
| ATTORNEYS, when privileged from arrest, .....             | 44    |
| BAIL, prisoner taken before magistrate to give, .....     | 137   |
| If not found, trial by special sessions, when, .....      | 137   |
| BALLOTS, with too many names not canvassed, .....         | 14    |
| BASTARDY CASES, proceedings in, .....                     | 108   |
| BEGGARS, to be arrested, .....                            | 104   |
| BOND OF CONSTABLE to be given, .....                      | 17    |
| To be approved, .....                                     | 17    |
| Contents of, .....                                        | 17    |
| To be filed when, .....                                   | 18    |
| Liability of sureties on, .....                           | 18    |
| Complaint in suits on, .....                              | 19    |
| To be filed in town clerk's office, .....                 | 17    |
| Form for, given by defendant, .....                       | 172   |
| Approval of surety, .....                                 | 174   |
| Given by third party, .....                               | 173   |
| Qualification of surety, .....                            | 174   |
| Given by putative father, .....                           | 109   |
| Of father given to the justice, .....                     | 111   |
| Of defendant under attachment, .....                      | 51    |
| Of third party under attachment, .....                    | 51    |
| How executed, .....                                       | 54    |
| Form indemnifying constable, .....                        | 187   |
| CANALS, certain officers of, exempt from jury duty, ..... | 68    |
| CERTIFICATE of attendance of constables, form of, .....   | 215   |
| CHALLENGE to jurors, what is, .....                       | 65    |
| CHattel MORTGAGE, notice of sale under, .....             | 202   |

|                                                         | PAGE.  |
|---------------------------------------------------------|--------|
| CHattel MORTGAGE, constable to foreclose, when, .....   | 117    |
| CHILREN, idle and truant to be committed, .....         | 99     |
| CITIES AND VILLAGES, constables in, .....               | 12, 14 |
| COLLECTORS and clerks on canal, exempt from jury, ..... | 68     |
| COLONIAL ASSEMBLY provided to elect constables, .....   | 11     |
| COLOR, persons of, may be elected constable, .....      | 13     |
| COMPLAINT form to remove constable, .....               | 163    |
| CONGRESS, members of, privileged from arrest, .....     | 45     |
| CONSTABLE, antiquity of the office, .....               | 9      |
| How originally appointed in England, .....              | 10     |
| CONSTITUTION, guarantees election of constable, .....   | 11     |
| CONSTABLES, how elected in colonial times, .....        | 11     |
| Election of, guaranteed by constitution, .....          | 11     |
| In cities and villages, how elected, .....              | 12, 14 |
| Who eligible to the office of, .....                    | 13     |
| Constitutional qualifications for, .....                | 13     |
| How elected, .....                                      | 14     |
| How many elected in each town, .....                    | 14     |
| If not elected to be appointed, .....                   | 14     |
| Office becoming vacant, justices appoint, .....         | 15     |
| Vacancy in cities, how supplied, .....                  | 15     |
| In Albany, how elected, .....                           | 16     |
| Vacancies filled, how, .....                            | 16     |
| Give bond, .....                                        | 17     |
| To file bond in town clerk's office, .....              | 18     |
| To take oath of office, .....                           | 16     |
| Not taking oath, office vacant, .....                   | 16     |
| Appointment of, a judicial act, .....                   | 19     |
| Hold their office for one year, .....                   | 19     |
| Vacate the office, how, .....                           | 20     |
| Not to receive gifts when, .....                        | 21     |
| Not to be hired to delay action, .....                  | 21     |
| Not to buy notes or demands, .....                      | 21     |
| Actions against, for buying claims, .....               | 22     |
| Forfeit his office, by receiving gratuity, .....        | 21     |
| Sentenced for felony, forfeits his office, .....        | 22     |
| Collecting money, sureties are liable, .....            | 22     |

|                                                         | PAGE. |
|---------------------------------------------------------|-------|
| CONSTABLES, acting without taking oath of office, ..... | 23    |
| How removed for not paying over money, .....            | 23    |
| May hold another office, .....                          | 24    |
| Duties in courts of record, .....                       | 25-27 |
| To be summoned by sheriff to attend court, .....        | 25    |
| Privileged from arrest, when, .....                     | 26    |
| To attend courts-martial, .....                         | 26    |
| To execute process from courts-martial, .....           | 27    |
| Powers and duties in justices' courts, .....            | 28-94 |
| To serve process in justices' courts, .....             | 28    |
| Has concurrent jurisdiction with sheriff, when, .....   | 28    |
| Governed by same law as sheriffs, when, .....           | 28    |
| Must reside in the town where elected, .....            | 28    |
| May call out the power of county, when, .....           | 28    |
| Who may be called on by constable, .....                | 29    |
| To report resisters to the court, .....                 | 29    |
| Liable for performing duty wrong, .....                 | 30    |
| Should be well acquainted with process, .....           | 30    |
| Is protected by process, when, .....                    | 31    |
| May stop in executing process, when, .....              | 31    |
| Not bound to look beyond the process, .....             | 31    |
| If irregularity waived, constable may proceed, .....    | 32    |
| To serve long summons, when, .....                      | 32    |
| To serve short summons, when, .....                     | 33    |
| Service of summons on foreign corporations, .....       | 34    |
| To leave copy summons, when, .....                      | 35    |
| Return of service of summons, what, .....               | 36    |
| Service of summons on R. R. Co., .....                  | 36    |
| Service of summons on several defendants, .....         | 37    |
| Service of summons defective, when, .....               | 37    |
| Cannot serve summons on Sunday, .....                   | 37    |
| Service of civil warrant by, .....                      | 38    |
| Cannot take security on civil arrest, .....             | 39    |
| Must show civil warrant, when, .....                    | 39    |
| May confine defendant, when, .....                      | 39    |
| If justice absent, on return, do what, .....            | 39    |
| Cannot detain defendant only twelve hours, .....        | 40    |

|                                                         | PAGE.  |
|---------------------------------------------------------|--------|
| CONSTABLES, may re-arrest, when, .....                  | 42     |
| May not arrest in civil actions on Sunday, .....        | 43     |
| Liable for escape, when, .....                          | 46     |
| May not demand anything of defendant, .....             | 47     |
| May pass through other counties with prisoner, .....    | 47     |
| Return of, to warrant, contain what, .....              | 48     |
| Must execute attachments, how, .....                    | 48     |
| May dispose of property under attachments, how, ...     | 50     |
| Not to remove goods taken under attachment, when,       | 51     |
| To approve security on bond in attachment, .....        | 52     |
| May take receipt for attached goods, when, .....        | 53     |
| To make inventory of attached goods, .....              | 54     |
| To make return to attachment, .....                     | 55     |
| Return of, not to be attacked collaterally, .....       | 56     |
| To take personal property in replevin, .....            | 57     |
| Return in actions of replevin, .....                    | 57, 60 |
| To take possession of concealed property, how, .....    | 59     |
| Should examine papers in replevin, .....                | 60     |
| To notify plaintiff that defendant excepts to sureties, | 61     |
| To serve subpœnas; how, .....                           | 61     |
| To make return of service of subpœnas, .....            | 63     |
| Should execute a venire, .....                          | 64     |
| Serve venire, how, .....                                | 67     |
| To summon what persons for jurors, .....                | 67     |
| To make return to venire, how, .....                    | 71     |
| To summon talesmen as jurors, when, .....               | 71     |
| Oath of, on retiring with jury, .....                   | 71     |
| Must take oath correctly, on retiring with jury, .....  | 72     |
| Must obey oath strictly on retiring with jury, .....    | 72     |
| Notify parties when jury come into court, .....         | 73     |
| Enforce executions, when, .....                         | 73     |
| May arrest defendant for a penalty, when, .....         | 75     |
| Enforce execution, how, .....                           | 76     |
| Sells goods on execution, how, .....                    | 76     |
| Must make the money, if possible, .....                 | 77     |
| Liability on illegal levy, .....                        | 77     |
| May enter buildings for property on execution, .....    | 78     |

|                                                        | PAGE.  |
|--------------------------------------------------------|--------|
| CONSTABLES, make inventory of goods levied on, .....   | 78     |
| May enter buildings to take goods, when, .....         | 78     |
| May remove goods on execution, .....                   | 79     |
| Sell property on defendant's premises, .....           | 80     |
| Levy on money, how, .....                              | 81     |
| Levy on mortgaged property, how, .....                 | 82     |
| Must levy before execution expires, .....              | 82     |
| Sale of, under execution, .....                        | 84, 85 |
| Cannot purchase at his own sale, .....                 | 85     |
| May take defendant on execution, when, .....           | 85     |
| Not liable for false imprisonment, when, .....         | 86     |
| Liable on neglect to return execution, .....           | 91     |
| Should pay money collected at once, .....              | 92     |
| Executions on two judgments proceed, how, .....        | 93     |
| May serve summons to remove tenant, .....              | 96     |
| Return of service of summons on tenant, .....          | 97     |
| Summon jury between landlord and tenant, .....         | 98     |
| May remove tenant, when, .....                         | 99     |
| As to idle and truant children, .....                  | 99     |
| Summoning jury as to damages on highway, .....         | 101    |
| Summoning jury as to encroachment, .....               | 101    |
| Collect fine on encroachment, .....                    | 103    |
| To arrest beggars and vagrants, .....                  | 104    |
| To arrest disguised persons, .....                     | 105    |
| To arrest hawkers and peddlers, .....                  | 106    |
| To arrest putative father, .....                       | 108    |
| May arrest in another county, .....                    | 109    |
| To detain putative father, .....                       | 110    |
| Should see that warrant for a father is correct, ..... | 111    |
| Arrest disturbers of religious meetings, .....         | 112    |
| Duties under excise law, .....                         | 113    |
| Summon jury as to habitual drunkards, .....            | 115    |
| Execute search for personal property, .....            | 115    |
| May foreclose chattel mortgage, .....                  | 117    |
| To search for property relating to the canal, .....    | 118    |
| To search for public books, when, .....                | 119    |
| May serve papers for supervisors, .....                | 120    |

|                                                      | PAGE.    |
|------------------------------------------------------|----------|
| CONSTABLES, to collect taxes, when,.....             | 121      |
| Serve process in courts-martial,.....                | 123      |
| Duties as a peace officer,.....                      | 124-143  |
| Duties in criminal proceedings,.....                 | 124-143  |
| May arrest felon without warrant, when,.....         | 124      |
| May arrest for affray without warrant, when,.....    | 124      |
| May arrest for assault without warrant, when,.....   | 126      |
| Duty in riot or affray,.....                         | 127, 128 |
| On arrest without warrant, duty of,.....             | 127, 128 |
| May take escaped prisoner at any time,.....          | 129      |
| Should see that warrant is regular,.....             | 130      |
| To act on receipt of warrant,.....                   | 132      |
| May break doors on arrest, when,.....                | 133      |
| What force may apply on arrest,.....                 | 134      |
| Duty after arresting,.....                           | 135      |
| Duty on arrest in foreign county,.....               | 136      |
| To take prisoner to give bail,.....                  | 137      |
| To summon jury for special sessions,.....            | 137      |
| Serve subpoena for special sessions,.....            | 139      |
| To attend court of special sessions,.....            | 139      |
| To serve search warrants,.....                       | 140      |
| Liable for goods while in his possession,.....       | 142      |
| Cannot act for party in justices' court, when,.....  | 143      |
| Cannot buy claims to collect,.....                   | 143      |
| Not to receive gratuity for certain acts,.....       | 143      |
| Convicted of misdemeanor forfeits office,.....       | 144      |
| Not to purchase at sale, when,.....                  | 145      |
| Penalty for not serving or returning execution,..... | 145      |
| Penalty for not filing oath,.....                    | 146      |
| Penalty for not executing process,.....              | 146      |
| Cannot act by deputy,.....                           | 146      |
| Must attend jury, when,.....                         | 148      |
| Cannot charge for keeping prisoner,.....             | 149      |
| Must allow prisoner to get necessities,.....         | 149      |
| Not liable for not returning execution, when,.....   | 150      |
| Action against security of,.....                     | 151      |
| Bond of, in New York,.....                           | 151      |

|                                                       | PAGE.    |
|-------------------------------------------------------|----------|
| CONSTABLES, fees in justices' courts, .....           | 153      |
| Fees in city of Albany, .....                         | 154      |
| Fees on trials of habitual drunkards, .....           | 156      |
| Fees, in special proceedings, ..                      | 155, 156 |
| Fees, insolvent proceedings, .....                    | 157      |
| Fees, special proceedings in Albany, .....            | 158      |
| Fees, criminal cases, .....                           | 158      |
| Not entitled to fees on levy only, .....              | 159      |
| Entitled to statute fees only, .....                  | 160      |
| To present bill to supervisors, .....                 | 160a     |
| Form of notice to, of election, .....                 | 161      |
| Form of appointment, .....                            | 161      |
| Form of resignation, .....                            | 162      |
| Form of notice of resignation, .....                  | 162      |
| Form of complaint to remove, .....                    | 163      |
| Form of notice to appear, .....                       | 164      |
| Form of constitutional oath, .....                    | 166      |
| Form of service of summons, .....                     | 168      |
| Form of oath on adjournment, .....                    | 183      |
| Form of oath on retiring with jury, .....             | 184      |
| Form of indemnity to, .....                           | 187      |
| Form of, to county clerk as to bail, .....            | 205      |
| Form of summons to attend court, .....                | 215      |
| Form of certificate of attendance of, .....           | 215      |
| CORPORATION, form of proof of service on, .....       | 168      |
| How served with summons, .....                        | 34       |
| Railroad, how served with summons, .....              | 36       |
| COUNSELLORS privileged from arrest, when, .....       | 44       |
| COURT OF LORD CONSTABLE, jurisdiction of, .....       | 11       |
| COURTS-MARTIAL, constable to attend, .....            | 26       |
| Constable to enforce process in, .....                | 27       |
| COURTS OF RECORD, constables to attend, .....         | 25       |
| DEFENDANT cannot give security on civil arrest, ..... | 39       |
| May be confined on arrest, when, .....                | 39       |
| May be taken before another justice, .....            | 40       |
| May be detained only twelve hours, .....              | 40       |
| Privileged from arrest, when, .....                   | 41       |

|                                                            | PAGE. |
|------------------------------------------------------------|-------|
| DEFENDANT, may except to plaintiff's sureties to replevin, | 58    |
| May give bond in replevin, .....                           | 58    |
| May be rearrested, when, .....                             | 42    |
| May give bond for attached goods, .....                    | 51    |
| DISGUISED PERSONS to be arrested, .....                    | 105   |
| DISORDERLY PERSON, warrant to arrest, .....                | 212   |
| Warrant to commit, .....                                   | 213   |
| DRUNKARD, habitual, proceedings against, .....             | 114   |
| Form of venire as to, .....                                | 201   |
| ELECTORS, exempt from arrest, when, .....                  | 43    |
| ENCROACHMENT, form of precept for a jury, .....            | 195   |
| Warrant to collect costs, .....                            | 195   |
| On highways, proceeding in, .....                          | 101   |
| ESCAPE, what is, .....                                     | 46    |
| Officer liable for, when, .....                            | 46    |
| EXCISE, proceedings under law as to, .....                 | 113   |
| EXECUTIONS, contain what, .....                            | 73    |
| Issued when, .....                                         | 73    |
| Returnable, when, .....                                    | 74    |
| Against joint debtors, part served, .....                  | 74    |
| May be renewed, when and how, .....                        | 74    |
| For penalty, indorsement on, .....                         | 75    |
| Cannot issue after five years, .....                       | 75    |
| Levy under, how made, .....                                | 76    |
| Inventory of goods taken, should be made, .....            | 78    |
| May reach property in building, .....                      | 73    |
| Goods taken on, may be removed, .....                      | 79    |
| Does not cover a levy after sixty days, .....              | 82    |
| Against attached property, .....                           | 83    |
| EXECUTION, not returned, damages, .....                    | 92    |
| Not returned, sureties liable, .....                       | 92    |
| Return to, contain what, .....                             | 93    |
| On two judgments, how paid, .....                          | 93    |
| How stayed on appeal, .....                                | 94    |
| Action for not returning, .....                            | 150   |
| Penalty for not levying or returning, .....                | 145   |
| Several, how satisfied, .....                              | 84    |

|                                                           | PAGE.    |
|-----------------------------------------------------------|----------|
| EXECUTION, form against property,.....                    | 184      |
| Form against the person, ....                             | 185      |
| Form, indorsement on, .....                               | 185      |
| Form, renewal of, .....                                   | 186      |
| Form, indorsement of levy, .....                          | 186      |
| Form, notice of sale under, .....                         | 186      |
| Form, bill of sale under,.....                            | 187      |
| Form, bond of indemnity on,.....                          | 187      |
| Form, return on, .....                                    | 189      |
| EXEMPT PROPERTY, what is, .....                           | 87       |
| What not, .....                                           | 90       |
| Must be proved to be so, when,.....                       | 90       |
| FATHER, putative, form of warrant to arrest, .....        | 200      |
| Form of certificate of justice on bond,.....              | 201      |
| FEES OF CONSTABLES, in justice's court,.....              | 153      |
| On trial of drunkards, .....                              | 155      |
| In special proceedings, .....                             | 155, 156 |
| In criminal cases, .....                                  | 157, 158 |
| Supervisors pay, when,.....                               | 158      |
| Entitled for services rendered,.....                      | 158      |
| To be paid by supervisors, when, .....                    | 159      |
| Supervisors act judicially in auditing,.....              | 160      |
| FEES OF WITNESSES, must be paid,.....                     | 62       |
| FELON, may be arrested without warrant,.....              | 124, 125 |
| FELONY, committed by constable, forfeits his office,..... | 22       |
| FEMALE, not to be arrested on execution,.....             | 86       |
| FIGHTING PERSONS, engaged in, may be arrested,.....       | 126      |
| FIREMEN, exempt from jury duty,.....                      | 69       |
| FIXTURES, what are, .....                                 | 80       |
| FINE, to whom paid, .....                                 | 139      |
| GRATUITY, constable not to receive, .....                 | 144, 150 |
| HABITUAL DRUNKARDS, proceedings against,.....             | 114      |
| HAWKERS, to be arrested, when, .....                      | 106      |
| HIGHWAY, form of precept for a jury,.....                 | 194, 195 |
| Summons for not working,.....                             | 196      |
| Warrant for not working,.....                             | 197      |
| HIGHWAY LAW, proceedings under,.....                      | 100      |

|                                                             | PAGE.    |
|-------------------------------------------------------------|----------|
| HOUSE, protects from arrest, when and whom, . . . . .       | 42       |
| HOUSE of defendant, may not be entered, when, . . . . .     | 35       |
| INVENTORY to be made of attached goods, . . . . .           | 54       |
| To be made of goods taken in execution, . . . . .           | 78       |
| Of attached goods, form of, . . . . .                       | 171      |
| IRREGULARITY in process waived, constable may enforce, .    | 32       |
| JURORS, who competent to be, . . . . .                      | 67       |
| Who exempt from being, . . . . .                            | 68       |
| Who may be discharged from serving on, . . . . .            | 69       |
| Bystanders may be summoned as, when, . . . . .              | 71       |
| JURY, how summoned, to remove a tenant, . . . . .           | 98       |
| May be summoned to try title, . . . . .                     | 77       |
| JUSTICES to appoint constables when, . . . . .              | 14       |
| Appointment of constable, how set aside, . . . . .          | 19       |
| May accept resignation of constable, . . . . .              | 20       |
| JUSTICES' COURTS, constables to serve process of, . . . . . | 28       |
| Proceedings for replevins in . . . . .                      | 56-60    |
| Fees of constables in, . . . . .                            | 153      |
| LANDLORD may remove tenant, when, . . . . .                 | 95       |
| Summons to tenant, . . . . .                                | 190      |
| Warrant to remove, . . . . .                                | 192, 193 |
| LEGISLATURE, MEMBERS, &c., privileged from arrest, . . . .  | 44       |
| LEVY, how made under execution, . . . . .                   | 76       |
| Illegal, constable liable, . . . . .                        | 77       |
| Creates a lien on goods, . . . . .                          | 79       |
| On mortgaged property, . . . . .                            | 82       |
| Does not satisfy judgment, . . . . .                        | 83       |
| Form of indorsement, . . . . .                              | 186      |
| LICENSE, proceedings in case of, . . . . .                  | 113      |
| LIMITATION of number of constables, . . . . .               | 14       |
| LIQUOR, selling without license, . . . . .                  | 113      |
| LORD CONSTABLE, power of, . . . . .                         | 10       |
| Abolished, when, . . . . .                                  | 11       |
| Jurisdiction of court of, . . . . .                         | 11       |
| MAGISTRATE may order arrest without warrant, when, . .      | 129      |
| Absent, constable is to find another, . . . . .             | 135      |
| MARINES privileged from arrest, when, . . . . .             | 45       |

|                                                         | PAGE. |
|---------------------------------------------------------|-------|
| MEETINGS, RELIGIOUS, disturbers of,.....                | 112   |
| MILITIA, exempt from arrest, when,.....                 | 43    |
| MORTGAGED PROPERTY may be taken on execution,.....      | 82    |
| MORTGAGE, CHATTEL, foreclosed by constable,.....        | 117   |
| Notice of sale, form of,.....                           | 202   |
| NEW YORK, bond of constable in, .....                   | 151   |
| NOTICE of sale on foreclosure of chattel mortgage,..... | 202   |
| NOTICE, form for constable to appear, .....             | 164   |
| That constable gave no security,.....                   | 167   |
| To Constable of his election, form of,.....             | 161   |
| Of sale, form under execution,.....                     | 186   |
| OATH of office of constable, before whom taken, .....   | 16    |
| Certificate of, when filed, .....                       | 16    |
| Of constable, on retiring with jury, .....              | 71    |
| On retiring with jury how taken, .....                  | 72    |
| OATH, form of constitutional,.....                      | 166   |
| Penalty for not filing,.....                            | 146   |
| Of constable on adjournment, form,.....                 | 183   |
| Retiring with jury,.....                                | 184   |
| OFFICERS OF COURT, when privileged from arrest,.....    | 44    |
| Of Legislature, when privileged from arrest,.....       | 44    |
| Of army and navy, privileged from arrest, when,.....    | 45    |
| ORDER, form to remove constable,.....                   | 164   |
| Certificate of clerk, on,.....                          | 165   |
| ORDINARY NEGLIGENCE, what is,.....                      | 49    |
| PARTIES to actions, privileged from arrest, when,.....  | 44    |
| PAWNED property, proceedings to search for,.....        | 115   |
| PEACE WARRANT, form of,.....                            | 212   |
| PEACE to be preserved by constables,.....               | 124   |
| PEDDLERS to be arrested, when,.....                     | 106   |
| PEDDLER, form of warrant to collect fine of,.....       | 199   |
| PERSONAL PROPERTY, recovery of possession of,.....      | 56-60 |
| Recovery of, see Replevin.                              |       |
| PLEGGED PROPERTY levied on, how,.....                   | 82    |
| PERSONS what may be called on to aid constable,.....    | 29    |
| Resisting, to be reported to the court,.....            | 29    |
| Resisting constables, to be punished,.....              | 30    |

|                                                       | PAGE.  |
|-------------------------------------------------------|--------|
| PHYSICIANS exempt from jury duty,.....                | 71     |
| POLL LIST of election, to be kept,.....               | 14     |
| POSSESSION of personal property, recovery of,.....    | 56-60  |
| POWER OF THE COUNTY may be called out by constable,.. | 29     |
| PRISONER, constable cannot charge,.....               | 149    |
| May send for necessities,.....                        | 149    |
| PRIVILEGE from arrest, local, when,.....              | 41     |
| Temporary, what,.....                                 | 43     |
| A man's house protects himself, not strangers,.....   | 42     |
| Permanent, when,.....                                 | 45     |
| Of constable, from arrest,.....                       | 26     |
| PROCESS, protects officer, when,.....                 | 31     |
| If irregular, constable may not act,.....             | 31     |
| PROPERTY pawned may be searched, when,.....           | 115    |
| RAILROAD COMPANY, how served with summons,.....       | 36     |
| RECEIPT may be taken for goods attached,.....         | 50, 53 |
| Form for attached property,.....                      | 171    |
| RECOVERY of possession of personal property,.....     | 56-60  |
| Of personal property, see Replevin.                   |        |
| RELIGIOUS meetings, disturber of,.....                | 112    |
| REMOVAL of constable by three justices,.....          | 23     |
| RENEWAL of execution, form of,.....                   | 186    |
| REPLEVIN in justice's court, when,.....               | 56     |
| Proceedings in, .....                                 | 56-60  |
| Form of affidavit, .....                              | 175    |
| Form, indorsement on affidavit,.....                  | 176    |
| Form, plaintiff's undertaking, .....                  | 176    |
| Form, acknowledgment of surety,.....                  | 177    |
| Form, qualification of surety,.....                   | 177    |
| Form, summons in, .....                               | 177    |
| Form, return to summons, .....                        | 178    |
| Form, exceptions to sureties, .....                   | 179    |
| Form, undertaking of defendant,.....                  | 179    |
| Form, affidavit of third party,.....                  | 179    |
| Form, notice to plaintiff of claim,.....              | 180    |
| Form, undertaking on claim, .....                     | 181    |
| RESIGNATION, of constable, form of, .....             | 162    |

|                                                      | PAGE.    |
|------------------------------------------------------|----------|
| RESIGNATION, form of notice of, .....                | 162      |
| RETURN, of service of summons, contain what, .....   | 36       |
| Should be prompt and accurate, .....                 | 38       |
| To attachment, contains what, .....                  | 55       |
| Cannot be attacked collaterally, .....               | 56       |
| To service of a venire, .....                        | 71       |
| Of constable in replevin, show what, .....           | 60       |
| Of service of summons on tenant, .....               | 97       |
| Indorsed on execution, .....                         | 151      |
| Form of service of summons, .....                    | 168, 177 |
| Form of service of warrant, ..                       | 169      |
| Form of service of attachment, .....                 | 174      |
| Form of service of subpœna, .....                    | 181      |
| Form of service of venire, .....                     | 183      |
| Form of service of execution, .....                  | 189      |
| Of constable to county clerk as to bail, .....       | 205      |
| To attachment against a witness, .....               | 214      |
| To supervisor's summons, .....                       | 203      |
| To criminal warrant, .....                           | 205      |
| RIOT, duty of constable in, .....                    | 127, 128 |
| SALE, on an execution, how conducted, .....          | 85       |
| Under execution, constable not to purchase, .....    | 145      |
| Under foreclosure of chattel mortgage, .....         | 118      |
| SALT-WORKS, persons in, exempt from jury duty, ..... | 69       |
| SEARCH-WARRANT, what is, .....                       | 139, 141 |
| How served, .....                                    | 140      |
| Form of, .....                                       | 210      |
| Form of return to, .....                             | 211      |
| SECURITY, action against on constable's bond, .....  | 151      |
| Of constable, form for, .....                        | 166      |
| Form of approval, .....                              | 166      |
| SEWING-MACHINE, exempt from sale on execution, ..... | 88       |
| SHERIFF, to summon constables to attend court, ..... | 25       |
| SPECIAL proceedings, fees in, .....                  | 155, 156 |
| SPECIAL SESSIONS, form of venire for, .....          | 207      |
| Form, return to venire, .....                        | 208      |
| Form, subpœna for, .....                             | 208      |

|                                                   | PAGE.    |
|---------------------------------------------------|----------|
| SPECIAL SESSIONS, form, return of subpoena, ..... | 209      |
| Form, warrant on conviction, .....                | 209      |
| How held, .....                                   | 138      |
| Constables serve subpoenas for, .....             | 139      |
| SUBPCENA, form in civil actions, .....            | 181      |
| Form, proof of service, .....                     | 181      |
| Form, for special sessions, .....                 | 208      |
| Form, criminal, .....                             | 210      |
| How served, .....                                 | 61       |
| Return to be made, .....                          | 63       |
| SUMMONS, long, what is, .....                     | 32       |
| When to be served, .....                          | 32       |
| Short, what is, .....                             | 33       |
| When to be served, .....                          | 33       |
| How served on persons, .....                      | 33       |
| How served on corporation, .....                  | 34       |
| Copy to be left, when, .....                      | 35       |
| Return to service of, contain what, .....         | 36       |
| On railroad company, .....                        | 36       |
| Cannot be served Sunday, .....                    | 37       |
| Service of defective, when, .....                 | 37       |
| May be amended, when, .....                       | 37       |
| Against tenant, when, .....                       | 96       |
| Against tenant, how served, .....                 | 97       |
| Return of service, .....                          | 97       |
| Form for not working highways, .....              | 196      |
| Proof of service, .....                           | 197      |
| Form of civil, .....                              | 167      |
| Proof of service, .....                           | 168      |
| Replevin, .....                                   | 177      |
| To constable to attend court, .....               | 215      |
| Against tenant, form of, .....                    | 189, 190 |
| Form of proof of service, .....                   | 190      |
| Of supervisor, return to, .....                   | 203      |
| SUNDAY, warrant to seize goods sold on, .....     | 214      |
| SUNDAY, what is, .....                            | 43       |
| No arrest on, in civil actions, .....             | 43       |

|                                                           | PAGE.         |
|-----------------------------------------------------------|---------------|
| SUPERVISORS papers, constable to serve,.....              | 120           |
| SUPERVISORS, pay constables' fees, when,.....             | 158           |
| Act judicially in auditing, .....                         | 160           |
| SURETIES of constable liable, when, .....                 | 92            |
| Of constable liable for money collected by him, .....     | 22            |
| In replevin, qualification of,.....                       | 58, 61        |
| SURETY on bond to be approved by constable, when,.....    | 53            |
| To prevent removal of goods,.....                         | 172, 173      |
| Qualification form of, .....                              | 174           |
| Form of approval, .....                                   | 174           |
| TEACHERS exempt from jury duty, .....                     | 71            |
| TEAM what is, exempt from execution,.....                 | 89            |
| TENANT'S property, what may be levied on,.....            | 80            |
| TENANT, may be removed, when,.....                        | 95            |
| Form of summons to remove,.....                           | 189, 190      |
| Proof of service, .....                                   | 190           |
| Venire, to remove,.....                                   | 191           |
| Warrant to remove,.....                                   | 192, 193, 194 |
| Return to warrant, .....                                  | 194           |
| TIME of detaining defendant on arrest,.....               | 40            |
| Of service of summons, how reckoned, .....                | 33            |
| Of computing service of attachment, .....                 | 49            |
| TITHINGS, ancient in England, .....                       | 9             |
| TOWN CLERK to notify justices, to appoint constable,..... | 16            |
| TOWN MEETING, constables to be elected at, .....          | 14            |
| UNDERTAKING, stays execution on appeal, .....             | 94            |
| Form of plaintiff in replevin, .....                      | 176           |
| Defendant in replevin,.....                               | 179           |
| Against third party in replevin,.....                     | 181           |
| VACANCY in office of constable, supplied how,.....        | 15            |
| VAGRANTS to be arrested,.....                             | 104           |
| VAGRANT, form of warrant to arrest,.....                  | 198           |
| Form of warrant to commit,.....                           | 199           |
| VENIRE, to be issued when,.....                           | 64            |
| How executed,.....                                        | 65, 67        |
| May be challenged to the array, when,.....                | 65            |
| Form of,.....                                             | 182           |

|                                              | PAGE.         |
|----------------------------------------------|---------------|
| VENIRE, form of return to, .....             | 183           |
| Form to remove tenant, .....                 | 191           |
| Form of service of, .....                    | 192           |
| Form of, for jury as to highways, .....      | 194           |
| Form of, for encroachment, .....             | 195           |
| Form as to habitual drunkard, .....          | 201           |
| Form for special sessions, .....             | 207           |
| VILLAGES, constables in, .....               | 12, 14        |
| WARRANT, CIVIL, what is, .....               | 38            |
| How served, .....                            | 38            |
| Who privileged, from arrest under, .....     | 41            |
| Must be shown, when, .....                   | 39            |
| Return to, contain what, .....               | 47            |
| Return of, may be amended, .....             | 48            |
| Issue to search pawned property, .....       | 115           |
| To search for canal property, .....          | 118           |
| For public books and papers, .....           | 119           |
| To collect taxes by county treasurer, .....  | 121           |
| From courts-martial, executed how, .....     | 123           |
| Not necessary for arrest, when, .....        | 124           |
| Criminal, what is, .....                     | 129           |
| Who may issue, .....                         | 129           |
| Where executed, .....                        | 130           |
| To be indorsed in foreign county, .....      | 130           |
| If wrong name, no protection, .....          | 113           |
| No blank should be left in, .....            | 131           |
| Returnable, when, .....                      | 131           |
| Continues in force, .....                    | 132           |
| To be shown, when, .....                     | 133           |
| Constable may keep, .....                    | 137           |
| For putative father, how executed, .....     | 109, 111      |
| Must be correct, .....                       | 111           |
| Form of a civil, .....                       | 169           |
| Form of proof of service, .....              | 169           |
| Form to remove tenant, .....                 | 192, 193, 194 |
| Form of return to, .....                     | 194           |
| Form to collect costs on encroachment, ..... | 195           |

|                                                         | PAGE. |
|---------------------------------------------------------|-------|
| WARRANT, CIVIL, form to collect fine as to highways,... | 197   |
| Form to arrest a vagrant,.....                          | 198   |
| Form to commit a vagrant,.....                          | 199   |
| Form to collect fine of a peddler,.....                 | 199   |
| Form to arrest putative father,.....                    | 200   |
| Form of indorsement on,.....                            | 201   |
| Form to search for canal property,.....                 | 202   |
| Form of return to warrant,.....                         | 203   |
| Form for assault and battery,.....                      | 204   |
| Form for criminal,.....                                 | 204   |
| Form of return to criminal warrant,.....                | 205   |
| Form to commit for examination,.....                    | 206   |
| Form to find bail, or special sessions,.....            | 206   |
| Form to bring up prisoner,.....                         | 207   |
| Form of conviction by special sessions,.....            | 209   |
| Form to search for goods,.....                          | 210   |
| Form to keep the peace,.....                            | 212   |
| Form to arrest disorderly person,.....                  | 212   |
| Form to commit a disorderly person,.....                | 213   |
| Form to seize goods sold on Sunday,.....                | 214   |
| WITNESS, how served with subpoena,.....                 | 61    |
| May be attached, when,.....                             | 63    |
| In landlord and tenant proceeding,.....                 | 99    |
| Privileged from arrest, when,.....                      | 44    |
| Form of attachment for,.....                            | 182   |











